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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~347~~ 84

HENRY ELCOX AND FREDERICK H. LARTER, PLAINTIFFS IN ERROR,

vs.

ROBERT HILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 21, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 347.

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vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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Præcipe.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, May term, A. D. 1873.

3 HENRY ELCOX, FREDERICK H. LARTER, copartners doing business under the firm-name and style of H. Elcox & Co. *vs.* ROBERT HILL. } Trespass on the case.

The clerk will issue summons in above-entitled cause directed to the marshal of said district, returnable May 5th, A. D. 1873.
Damages fifteen thousand dollars.

WILLETT & HERRING,
Plaintiffs' Att'y.

CHICAGO, *March 26th*, 1873.

(Endorsed:) Filed March 26th, A. D. 1873. W'm H. Bradley, clerk.

And on the same day, to wit, the 26th day of March, A. D. 1873, a writ of summons issued out of said clerk's office against said defendant in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

4 We command you to summon Robert Hill, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto Henry Elcox & Frederick H. Larter, copartners doing business under the firm-name and style of H. Elcox & Co., of a plea of trespass on the case to their damage, as they allege, of fifteen thousand dollars, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 26th day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the 97th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

I served the within summons by reading the same to and in the presence and hearing of Robert Hill, therein named, on the 23d day of April, 1873.

B. H. CAMPBELL,
U. S. Marshal.
By S. H. TOURTELLOTTE,
Deputy.

5 (Endorsed:) Filed April 25th, A. D. 1873. W'm H. Bradley, clerk.

Afterwards, to wit, on the 16th day of April, A. D. 1873, said plaintiffs by their attorneys, filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

Circuit court of the United States of America, northern district of Illinois, to the May term A. D. 1873, ss:

Henry Elcox and Frederick H. Larter, who are each residents and citizens of the State of New Jersey, one of the United States of America, being copartners, doing business under the firm-name and style of H. Elcox & Co., in the city of Newark, county of Essex, and State of New Jersey aforesaid, the plaintiffs, by Willett & Herring, their attorneys, complain of Robert Hill, who is a citizen and resident of the county of Cook and State of Illinois, one of the United States of America, defendant, of a plea of trespass on the case, for that whereas by the law and custom of the said State of Illinois inn-keepers who keep common inns for the reception, lodging, and entertainment of travellers putting up at and abiding in the same, are bound to keep the goods and chattles brought by such travellers into and being within their respec-
6 tive inns, safely and without any diminution or loss; and whereas the said Robert Hill, before and at the time of the loss hereinafter next mentioned, was, and from thence hitherto hath been and still is an inn-keeper, and as such inn-keeper he, the said Robert Hill, hath for and during all that time kept and still doth keep a certain common inn for the reception, lodging, and entertainment of travellers, that is to say, a certain inn or hotel, commonly called and known by the name and sign of the Matteson House, situate and being at the city of Chicago, county of Cook and State of Illinois, one of the United States of America.

And whereas, also, the said Robert Hill, so being such inn-keeper, and so keeping the said inn as aforesaid, the said Frederick H. Larter, one of the said plaintiffs composing the said firm of H. Elcox & Co., as aforesaid, heretofore, to wit, on the 9th day of March, A. D. 1873, at the said certain inn or hotel, commonly called and known as "The Matteson House," aforesaid, at the said city of Chicago, to wit, at the county of Cook and State of Illinois, aforesaid, put up and was then and there received into the said inn or hotel as a traveller by the said Robert Hill, and then and there brought into the said inn or hotel two certain valises or travelling bags, containing certain articles of wearing apparel, jewelry, goods, and chattles, to wit: Two (2) velvet-lined ring-
7 trays, two (2) sample boxes, three (3) white shirts, four (4) handkerchiefs, four (4) pairs of socks, three (3) pairs of cuffs, twelve (12) large amethyst rings, six (6) incrusted amethyst rings, eight (8) medium-size amethyst rings, two (2) small size amethyst rings, six (6) large size topaz rings, one (1) one-size topaz ring, twelve (12) incrusted sardonyx rings, nine (9) black onyx cross-centre rings, five (5) crystal rings, painted, three (3) large cameo rings, twenty-five (25) small cameo rings, eight (8) large square-head seal rings, twenty (20) large oval-head seal rings, twenty (20) medium square-head rings, filed up; ten (10) large-head seal rings, flat; fifteen (15) medium square-head rings, flat; eight (8) large square-head rings, flat; four (4) dozen small seal rings, No. 1; ten-twelfths ($\frac{10}{12}$) dozen small seal rings, No. 3, filed; one and one fourth ($1\frac{1}{4}$) dozen small seal rings, No. 1, inlaid; three-fourths ($\frac{3}{4}$)

dozen seal rings, No. 1, inlaid, filed up; one and one-half (1½) dozen seal rings, oval, inlaid, flat; three-fourths (¾) dozen seal rings, oval, inlaid, filed up; one and one-half (1½) dozen garnet rings, two thirds (⅔) dozen whole pearl rings, three-fourth (¾) dozen imitation-stone rings, three (3) dozen enameled band rings, three (3) colored band rings, seven (7) pairs of large oval buttons, twenty-three (23) pairs of oblong sardonyx buttons, five (5) pairs of round amethyst buttons, ten (10) pairs of green gold-centre buttons; eight (8) pairs gold buttons, stone centre; thirty-nine (39) pairs of stone buttons, ten (10) pairs of gold buttons, No. 18; twelve (12) pairs of gold buttons, No. 18 E.;
8 fifteen (15) pairs of gold buttons, No. 12; eighteen (18) pairs gold buttons, No. 12 E.; twelve (12) pairs gold buttons, No. 11; ten (10) pairs of gold buttons, No. 11 E.; ten (10) pairs gold buttons, No. 6; ten (10) pairs of gold buttons, No. 6 E.; five (5) pairs of gold buttons, No. 5; eight (8) pairs gold buttons, No. 4; eight (8) pairs of gold buttons, No. 4 E.; eight (8) pairs of gold buttons, No. 2; eight (8) pairs of gold buttons, No. 2 E.; eight (8) pairs of ear-rings, two and one-half (2½) dozen collar buttons, No. 1; two (2) dozen collar buttons, No. 2; two dozen collar buttons, No. 3; one and one-half (1½) dozen collar buttons for back of neck, one and one-half (1½) dozen enamelled ladies' buttons, one (1) dozen engraved studs, eleven (11) jet and gold sets, seventy-one (71) pairs of shawl-pins, ninety-seven (97) sets pat. studs, fifteen (15) sets pat. studs, imitation amethyst and topaz; twelve (12) sets pat. studs, paste; eight (8) sets pat. studs, sardonyx; four (4) sets pat. studs, No. 75; eight (8) sets pat. studs, garnet; twenty (20) sets pat. studs, fancy stone; eight (8) round sardonyx seals, two (2) coral-head scarf-pins, three (3) crystal painted scarf-rings, twenty (20) imitation stone scarf-rings, ten (10) imitation-stone scarf-pins, two (2) imitation-stone scarf-pins, twenty-four (24) large oval rings, twenty-four (24) long head seal-rings, six (6) small oval rings, twenty-four (24) medium square-head rings, eighteen (18) medium square-head rings, two (2) dozen enamelled band rings, sixty pennyweights; three (3)
9 dozen chased band rings, seventy-five pennyweights; three (3) dozen chased band rings, fifty-five pennyweights; to them, the said Henry Elcox and Frederick W. Larter, the plaintiffs, of great value, to wit, of the value of six thousand three hundred and three & $\frac{65}{100}$ dollars ($6,303 $\frac{65}{100}$), and one of which said travelling bags and its contents being a portion of the articles aforesaid, and a small box contained in the other of said travelling bags, and the contents of the said small box being a portion of the articles aforesaid, were there, and from thence until and at the time of the loss hereinafter mentioned, within the said inn or hotel, commonly called and known by the name and sign of the Matteson House aforesaid, at the said city of Chicago, county and State aforesaid; and that the said Frederick H. Larter, during all that time, abided as a traveller therein, at the said city of Chicago, to wit, at the county of Cook, State of Illinois, one of the United States of America, aforesaid, yet the said Robert Hill, so being such innkeeper as aforesaid, not regarding his duty as such innkeeper, did not keep the said travelling bags and their contents as aforesaid, so brought into, and so being in the said inn as aforesaid, safely and without diminution or loss, but on the contrary thereof, the said Robert Hill and his servants so negligently and carelessly behaved and conducted themselves in that behalf, that afterwards, and whilst the said Frederick H. Larter so abided in the said inn or hotel aforesaid, to
10 wit, on the 10th day of March, A. D. 1873, one of the said travelling bags and its contents, and a portion of the contents of the

other of said travelling bags, being in all the contents aforesaid, viz, the articles of wearing apparel and articles of jewelry aforesaid, were by and through the mere carelessness, negligence, and default of the said Robert Hill and his servants in that behalf, wrongfully and unjustly taken and carried away by some person to the said Frederick H. Larter or the said Henry Elcox unknown, and were, and still are, thereby wholly lost to the said Henry Elcox and the said Frederick H. Larter, to wit, at the city of Chicago, county of Cook and State of Illinois, one of the United States of America, as aforesaid.

Wherefore the said Henry Elcox and the said Frederick H. Larter say that they are injured and have sustained damages to the value of fifteen thousand dollars, and therefore they bring this suit.

And whereas, also, heretofore, to wit, on the day and year aforesaid, at the city of Chicago, to wit, at the county of Cook and State of Illinois aforesaid, in consideration that the plaintiffs, at the special instance and request of the defendant, had then and there caused to be delivered to the defendant divers other jewelry, goods, and merchandise, t

11 wit, jewelry, goods, and merchandise of the like number, quantity and quality, description and value, as those in the first count mentioned, to be by the defendant safely kept and taken care of, and to be redelivered by the defendant to the plaintiffs on request, for reward to the defendant, the defendant promised the plaintiffs to safely keep and take care of said jewelry, goods, and merchandise, and to redeliver the same to the plaintiffs on request, and afterwards the plaintiffs requested the defendant to redeliver to them the said jewelry, goods, and merchandise, and a reasonable time for the redelivery thereof elapsed after such request, yet the defendant did not redeliver the said jewelry, goods, and merchandise to the plaintiffs, and the defendant not regarding his duty in that behalf, afterwards, to wit, on, &c., aforesaid, at, &c., aforesaid, by himself and his servants in that behalf, conducted himself so carelessly, negligently, and improperly in and about the premises, that the said jewelry, goods, and merchandise were wholly lost to the plaintiffs, to wit, at, &c., aforesaid.

Wherefore the said Henry Elcox and Frederick H. Larter, the plaintiffs, say they are injured and have sustained damages to the value of fifteen thousand dollars, and therefore they bring this suit.

WILLETT & HERRING,
Pl'ff's' Att'ys.

12 Copy of list of articles sued on.

Robert Hill to H. Elcox & Co. DR.

1 large black morocco bag			$5 00
1 velvet-lined ring tray			2 50
1 " " " "			75
2 sample boxes			1 50
3 white shirts (partly worn)	@	$2 00	6 00
4 " handkerchiefs, new	@	35c	1 40
4 p'r socks	@	25c	1 00
3 p'r cuffs	@	35c	1 05
12 large amethyst rings	@	$20 00 each	240 00
6 incrusted " "	@	$14	84 00
8 medium-size " "	@	$7 50	60 00
2 small " "	@	$4 50	9 00
6 large " topaz "	@	$20 00	120 00
1 small " " "	@		5 00
12 incrusted sardonyx "	@	$11	132 00
9 bl'k onyx cross-centre rings	@	$9 00	81 00
5 crystal rings, painted	@	$8 50	42 50

2 large cameo rings	@	$15 00	30 00
1 " " "	@		12 00
25 small " "	@	$9 00	225 00
8 large square-head seal rings	@	$8 00	64 00
20 " oval " "	@	$7 50	150 00
20 medium square-head, filed up	@	$5 50	110 00
20 long-head seal rings " "	@	$6 50	130 00
10 " " " " flat	@	$5 50	55 00
15 medium square-head " "	@	$4 50	67 50
15 " oval " " "	@	$4 00	60 00
8 large square " " "	@	$5 50	42 50
4 doz. small seal rings, No. 3	@	$36 00	144 00
			$1,882 70

13

Brought			$1,882 70
4 doz. small seal rings, No. 1	@	$33	132
½ " " " " 3, filed	@	$48	40
1¼ " " " 1, inlaid	@	$42	52 50
¾ " seal rings, No. 1, inlaid, filed up	@	$54	40 50
1½ " " oval " flat	@	$42	63 00
¾ " " " filed up	@	$54	40 50
1½ " garnet rings	@	$48 00	72 00
¾ " whole pearl rings	@	$54 00	36 00
¾ " imitation-stone rings	@	$36	37 00
3 " enameled band rings, 90 dwt.	@	$1 25	112 50
4 " chased band rings, 100 dwt.	@	$1 10	110 00
4 " chased band rings, 75 dwt.	@	$1 10	82 50
¾ " chased band rings, 10 dwt.	@	$1 10	11 00
3 colored band rings, @ 6 dwt.	@	$1 20	7 20
7 p'rs large oval buttons	@	$12 00	84 00
15 p'rs oblong sardonyx "	@	$11 00	165 00
2 p'r " "	@	$9 00	18 00
4 p'r " "	@	$8 00	32 00
2 p'r " " "	@	$7 50	15 00
4 p'r round amethyst "	@	$10 50	42 00
1 p'r " " "	@		9 00
10 p'r green gold-centre "	@	$8 50	85 00
8 p'r gold buttons, stone centre	@	$8 50	68 00
4 p'r stone " No. 10	@	$6 00	24 00
8 p'r " " " 10, old	@	$5 50	44 00
		$1,412 70	$3,295 40

14

Brought			$3,295 40
10 p'r stone buttons, No. 9	@	$4 50	45 00
15 p'r " " knife-edge	@	$7 00	105 00
2 p'r " " " "	@	$7 50	15 00
10 p'r gold buttons, No. 18	@	$4 50	45 00
12 p'r " " " 18 E	@	$5 00	60 00
15 p'r " " No. 12	@	$3 75	56 25
18 p'r " " " 12 E	@	$4 50	81 00
12 p'r " " " 11	@	$2 75	33 00
10 p'r " " " 11 E	@	$3 75	37 50
10 p'r " " " 6	@	$4 00	40 00
10 p'r " " " 6 E	@	$4 50	45 00
5 p'r " " " 5	@	3 75	18 75
8 p'r " " " 4	@	3 50	28 00
8 p'r " " " 4 E	@	4 00	32 00
8 p'r " " " 2	@	2 75	22 00
8 p'r " " " 2 E	@	3 00	24 00
8 p'r earrings, Nos. 1 & 2	@	$4 00	32 00
2½ doz. collar buttons, No. 1	@	$10	25 00
2 " " " No. 2	@	$12	24 00
2 " " " " 3	@	$15	30 00
1½ " " " for back of neck	@	$12	18 00
1½ " enameled ladies' buttons	@	$13 50	20 25
1 " engraved studs, No. 40	@	$10	10 00

9	jet & gold sets	@	$17 00	153 00
1	" " "	@		18 00
1	" " "	@		13 50
12	p'r shawl pins, No. 1	@	$3 50	42 00
12	p'r " " No. 1 E	@	$3 75	45 00
25	p'r " " No. 2 E	@	$5 50	137 50
			$1,255 75	$4,551 15

15

	Brought			4,551 15
10	p'r shawl pins, No. 2	@	4 50	45 00
4	p'r " " " 3	@	5 50	22 00
8	p'r " " " 3 E	@	6 00	48 00
10	set' pat. studs, No. 10	@	2 25	22 50
10	" " " " 15	@	2 50	25 00
12	" " " " 19	@	3 00	36 00
20	" " " 19 E	@	3 25	65 00
3	" " " 50	@	2 20	7 50
10	" " " 50 E	@	3 50	35 00
20	" " " 26	@	3 00	60 00
12	" " " 30	@	3 50	42 00
15	" " " in amethyst and topaz	@	4 50	67 50
12	" " paste	@	4 50	54 00
8	" " sardonyx	@	4 50	36 00
4	" " No. 75	@	4 00	16 00
8	" " garnet	@	3 75	30 00
20	" " fancy stone	@	4 50	90 00
8	round sardonyx seals	@	$9 00	72 00
2	coral-head scarf pins	@	$6 00	12 00
3	crystal painted scarf pins	@	$5 50	16 50
20	im. stone scarf rings	@	$3 75	75 00
10	" " " pins	@	$3 75	37 50
2	" " " "	@	$5 50	11 00
			$925 50	$5,476 65

16

	Brought			$5,476 65
	Contents of box taken from small satchel :			
24	large oval rings	@	7 50	180 00
24	long-head seal "	@	8 00	192 00
6	small oval "	@	4 00	24 00
24	medium square head	@	5 50	132 00
18	" " "	@	4 50	81 00
2	doz. enameled band rings, 60 dwt	@	1 25	75 00
3	" chased band rings, 75 dwt	@	1 10	82 50
3	" chased band rings, 55 dwt	@	1 10	60 50
	Total am't		$827 00	6,303 65

(Endorsed:) Filed April 16, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 5th day of May, A. D. 1873, said defendant, by his attorneys, filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA:
Northern District of Illinois, ss :

In the circuit court of the United States for the northern district of Illinois, of the May term, A. D. 1873.

HENRY ELCOX AND FREDERICK H. LARTER
vs.
ROBERT HILL.

17 And the said defendant, by A. B. Jenks, his attorney, comes and defends the wrong and injury, when, &c., and says that he is

not guilty of the said supposed grievances above laid to his charge, or any or either of them, in manner and form as the plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the country, &c.

A. B. JENKS,
Att'y for Def'ts.

And the plaintiffs doth the like.

WILLETT & HERRING,
Pl'ffs' Att'ys.

(Endorsed:) Filed May 5, 1873. W'm H. Bradley, cl'k.

And afterwards, to wit, on the 25th day of June, A. D. 1873, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX AND FREDERICK H. LARTER
vs.
ROBERT HILL. } Trespass on the case.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit, O. R. McKenney, J. W. Walker, E. R. Baker, W. V. Plum, George Mann, S. W. Morse, E. L. Waterman, William Bavin, L. Hinkiton, W. S. Wood, J. W. Darneille, and Avery Cook, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 26th day of June, A. D. 1873, in the said adjourned May term of said court, in the record of the proceedings thereof in the said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX AND FREDERICK H. LARTER
vs.
ROBERT HILL. } Trespass on the case.

Now come the parties again, by their said attorneys, and now come also the jury in this behalf empanelled and sworn, and after hearing the concluding evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 27th day of June, A. D. 1873, in the said adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

19 HENRY ELCOX AND FREDERICK H. LARTER
vs.
ROBERT HILL. } Trespass on the case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empanelled and sworn, and after hearing the arguments of counsel and receiving the instructions of the court the jury

retired to consider of their verdict, and by agreement of the parties, by their attorneys, the jury, when they shall have agreed upon a verdict, may sign and seal the same and deliver it to the clerk and disperse.

Afterwards, to wit, on the 28th day of June, A. D. 1873, in the said adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX ET AL. vs. ROBERT HILL. } Trespass on the case.

The jury in this behalf empanelled and sworn this day returned into court and reported that they had been unable to agree upon a verdict, and by agreement of the parties, by their attorneys, it is ordered by the court that the jury be discharged from the further consideration of this cause.

20 Afterwards, to wit, on the 17th day of March, A. D. 1875, in the adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX AND FREDERICK H. LARTER vs. ROBERT HILL. } Trespass on the case.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit, Wesley Johnson, George H. Lamphere, James D. Tyler, Martin Spencer, P. R. Isham, Edward Manierre, Sanford Rankin, William Johnson, Daniel Whipple, W. B. Grant, P. P. Gibbs, and C. F. Dunbar, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the opening statements of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

Afterwards, to wit, on the 18th day of March, A. D. 1875, in the said adjourned March term of said court, in the record of proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX ET AL. vs. ROBERT HILL. } Trespass on the case.

21 Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the evidence and a part of the arguments of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

And afterwards, to wit, on the 19th day of March, A. D. 1875, in the said adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX ET AL. } Trespass on the case.
v.
ROBERT HILL. }

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the concluding arguments of counsel and receiving the instruction of the court, the jury retired to consider of their verdict, and after a short absence the jury returned into court the following verdict, to wit:

"We, the jury, find the defendant not guilty."

And thereupon the plaintiff, by his attorney, moves the court for a new trial herein.

And afterwards, to wit, on the 22d day of March, A. D. 1875, said plaintiffs, by their attorneys, filed in said clerk's office their mo-
22 tion for a new trial in said entitled cause, which said motion is in the words and figures following, to wit:

Motion for a new trial.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court. To the March term, A. D. 1875.

HENRY ELCOX AND FREDERICK H. LARTER, copartners, doing business under the firm name and style of H. Elcox & Co., } *vs.* ROBERT HILL.

And now comes the plaintiffs, by their attorneys aforesaid, and move the court to set aside the verdict rendered and to grant a new trial in this cause.

And for grounds of their motion the plaintiffs show to the court the following, to wit:

1. The court refused to allow proper evidence on the part of the plaintiffs.
2. The court admitted improper evidence on the part of defendant.
3. The court erred in his charge to the jury, and in every part of such charge.
4. The court erred in refusing to charge the jury as requested by plaintiffs in accordance with the statutes of Illinois.
5. The verdict of the jury is contrary to the law and the evidence.

23 WILLETT & HERRING,
Att'ys for Pl'ffs.

(Endorsed:) Filed March 22d, 1875. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 22 day of May, A. D. 1875, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

HENRY ELCOX AND FREDERICK H. LARTER
v.
ROBERT HILL. } Trespass on the case.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the plaintiffs heretofore entered herein for a new trial of this cause, and after hearing the arguments of counsel, the court overruled said motion.

It is thereupon considered and adjudged by the court that the defendant be discharged, and that he go hence without day, and that he have and recover of the plaintiffs his costs and charges about his defence in this behalf expended, amounting to the sum of forty-six dollars and forty cents, and that he have execution therefor.

24 And on the same day, to wit, the 22d day of May, A. D. 1875, on the hearing of said cause, the following exceptions were taken and allowed by the court, and made of record in said entitled cause, and are in the words and figures following, to wit:

Bill of exceptions.

Circuit court of the United States for the northern district of Illinois, for the March term, A. D. 1875, ss:

HENRY ELCOX AND FREDERICK H. LARTER, copartners under the firm name and style of H. Elcox and Co., pl'ffs,
vs.
ROBERT HILL, DEF'T. } Bill of exceptions.

Be it remembered that on the trial of this cause, before the honorable Henry W. Blodgett and a jury, in this term, the plaintiff gave in evidence on his behalf as follows, that is to say:

Testimony of Frederick H. Larter.

FREDERICK H. LARTER, plaintiff, being sworn, testified:

Plaintiffs reside at Newark, New Jersey, and compose the firm of H. Elcox & Co., manufacturers of solid gold jewelry. My business is to keep the books, to travel, and assist in selling goods.

On Monday, 4th of March, 1873, I left New York for a trip to sell goods in the West, by the Erie road, and arrived at Buffalo Tuesday morning. I spent the 5th in Buffalo, and the 6th and most of the
25 7th in Cleveland. I do not remember of showing or selling any goods in Buffalo. In Cleveland I sold three bills of jewelry.

My stock consisted mostly of rings, with buttons, sets, studs, and a few seals. The majority of rings I carried in a tray that would hold from 200 to 220, arranged in a rest, others in bunches of a dozen. All the other goods were corded. I showed and sold the goods in Cleveland, to Whitcomb and Metton, George Pugh, and Frederick Grossenbecker. Their depositions are here.

I left Cleveland on the 7th, arriving at Detroit on the 8th, where I sold goods to Albert Fisher, whose deposition is here.

I came to Chicago the 9th, arriving about half past eight Sunday morning. I at once went to the Matteson House by means of an open wagon, going myself with the bags, and registered my name, and re-

quested a room. The clerk said he had no room, but would give me one after awhile, and requested me to have my bags checked and put in the check-room. I did so. I placed my bags upon the counter when I registered, a large bag and a small one. I waited around for a room. About half past one I was assigned to a room on the top floor. I went by the elevator, and was shown to the room by a bell boy, named Kidd; he and I taking the bags to the room. I remained there about an hour, and then went to the lower floor and gave my key to the
26 same bell boy, and asked him to bring my bags down and recheck them, and give me the checks.

I went in to dinner, and on coming out from dinner he gave me a check for the bags, and I looked into the check-room and saw the bags were properly checked, the handles of both bags being checked together by the strap of one check. I walked in the burnt district, which was partly rebuilt, and came in to tea. I then saw the bags. After tea I went to church and returned about ten o'clock. I then saw the bags in the check-room, as they were put there in the afternoon, and on my looking into the check-room at that time, the boy then on duty, and who was outside of the room, came up to me and assured me that everything would be safe there; that the room was locked up at twelve o'clock at night, and the key handed in to the night clerk of the house. Upon that I rested satisfied, and went to my room to bed.

At eight o'clock in the morning I requested my bags; upon that only the small bag was produced, with the check upon that. Michael Kelley was on duty. I asked where the other bag was. He said he didn't know; there was the check corresponding with the one I had. I then informed the clerk of the house that I had two bags and they could not be produced, and he called the proprietor, and I stated the same thing to the three, Kelley, Woodcock, and Hill. I told Kelley I would not receive the bag; to take it to the clerk, Woodcock. Then I asked the three where the boy was who was on duty Sunday night, and
27 there was no one that could tell me where he was or where he roomed. The check-room looked as it did when I had the bags checked.

I went to the police headquarters and reported the loss. While there Woodcock came in and reported he had just found out where William Drum roomed, on Van Buren street. That the landlady reported that he, with one or two companions, left hastily in the night, reporting that they were going to St Joseph, some place far west, and that they left in such haste as to leave part of their clothing behind, and had paid a month's rent in advance, and the month had not expired yet.

I then made an inventory, to the best of my memory, of the contents of the larger bag, and opened the smaller bag before Woodcock, and says I, "The fellow has gone through that too." That contained a box of rings. I immediately made a memorandum of the contents of that bag, and added it to the amount of the larger bag. I told M'r Hill the amount I had lost, and that I had made an inventory.

The bill of particulars attached to the declaration is a copy of that inventory with a fair cash price of said articles, the total market value of the goods lost being $6,303.65. That is the market price.

Check and page of register (Exhibit A) offered in evidence, and are as follows:

28 EXHIBIT A.

MATTESON HOUSE. ROBERT HILL, PROPRIETOR.

(The words "Money, jewels, and valuable property must be placed in

the safe in the office, otherwise the proprietor will not be responsible for any loss," are printed in one line, under the heading.)

(Names of 7 guests.)

SUNDAY, *March 9th*, 1873.

(Names of 14 guests.)

F. H. Larter, Newark, N. J.

(Names of 3 guests.)

I did not read the register; the small bag I left in the possession of defendant. I examined my stock carefully in Detroit about four o'clock Saturday afternoon, at the Matteson House, in my room. I opened the bag and found it was undisturbed. The larger bag was locked; the smaller one was not, I think; we never have locked that. I afterwards saw Drum here at the police headquarters, under arrest for the stealing of these goods. The boy was taken before Justice Banyon, examined, and discharged. He was rearrested and tried before Justice De Wolf, who committed him to await the action of the grand jury under thousand-dollar bonds. Woodcock said Drum's month's wages were due him on Monday, the day after he left, and had not been paid.

Cross-examination:

The contents of the large bag was worth about fifty-three hundred dollars, and the small one, one thousand dollars. The small bag was not locked; it had no key; it had a hasp or catch that could be readily opened without a key; the larger bag was locked. During the time I was waiting for a room, the bags were in the coat room. The clerk told me to have them checked. When I laid the bags down upon the counter when I first arrived, I did not have any conversation with the gentleman in charge as to the contents of the bags. I did not tell him when he told me to have them checked that they contained over six thousand dollars' worth of merchandise. I did not inform any person connected with the Matteson House before the loss of the contents of the bags. I didn't see any safe or vault; I did not look for any; did not ask any person in charge of the office to take special care of these bags; did not ask to have them put in the safe, because I didn't look for the safe or know they had one.

I went up in the elevator with the bags and the boy at 4 p. m., when the bags went from the check-room to my room. Either the bell-boy or I had a key to the room. The bags were placed down upon the floor. I think I locked the room. I returned to the office and requested the bell-boy, Joseph Kidd, who had shown me the room, to take my key, bring my bags down, and recheck them, and to give me the check; and told him I was going in to dinner. That was my first visit to Chicago. I did not wait to see the bags brought down, but went to dinner. The bell-boy handed my room-key into the office. I got the check for the bags from Kidd immediately on coming from dinner. I made no examination to see whether the contents of either of the bags were undisturbed. I saw them in the coat-room when I came out from dinner. I was absent in the burnt district until six o'clock. I cast my eye in the check-room and saw the bags there all right.

After supper I went to church. When I returned, at 10 p. m., I look-
into the coat-room and saw the bags there. Drum voluntarily came
and told me that my bags would be perfectly safe in that place;
31 that it was locked at twelve o'clock at night, and the key handed
in to the night-clerk. I went to bed. I left the bags in the place
where the boy said they would be safe, and that is the last that I ever
saw of the large bag. The small bag was found in the morning, upon
examination, to have been rifled of its contents; William Drum was in
charge of the coat-room that night. I carried the bags to the coat-room
to have them checked, and delivered them to William Drum, who gave
me a check for them Sunday morning. I took with me on this trip about
all our finished goods at that time.

Redirect:

I had made but one trip before that. I did not see any notice at that
time on the inside of the door of my room. I saw one after I met with
my loss, on the inside of my bed-room door. I didn't notice them any-
where else in the house. I was requested by M'r Herring, my attorney,
after consulting him, to make an inspection in regard to notices, and I
inspected all the public rooms carefully, and there was no notice posted
up anywhere except in my own room. There was not any notice in sight
in the office. M'r Hill said, when I told him that he had not complied
with the law in posting these notices, "I have; if you will just stick
your head inside of the desk you will see one." I don't know whether
there was one on the inside or not. There was no notice on the
32 reading, bar, or dining room doors. I examined carefully. I look-
ed of my own accord for notices Monday evening and Tuesday
morning. I found new notices posted on the doors either on Tuesday
evening or Wednesday morning. I made it my business morning and
night to go about these doors, after I was requested to do.

Deposition of Michael Kelley.

The deposition of MICHAEL KELLEY was then read in evidence:

I was employed as bell and coat-room boy in the Matteson House,
Chicago, Illinois, in March, 1873. I checked coats, baggage, bags, va-
lises, and umbrellas of passengers and guests of said house, and deliv-
ered the same to owners when required. I first saw M'r Larter there on
Sunday, March 9th, 1873, about 5 p. m. I saw his baggage, a large
square bag, and a small satchel. I took care of them, and gave M'r Lar-
ter a check for the same. I had charge of the coat-room. The two par-
cels were checked by one check. I took particular notice of them when
I checked them. I lifted them off the counter and put them in the coat-
room. One was a large, square leather bag; the other was a small
satchel with brass mountings; the large one was plain. I came to know
the bag from the peculiarity of its shape and the great weight of its
contents. I last saw the large square bag on the 9th of March, 1873,
when I stowed it away. W'm Drum relieved me of my duty in
33 said coat-room from 10 minutes past 6 o'clock p. m., March 9th,
till 12 o'clock midnight. His duty was the same as mine. He
locked, or was to lock the place up at midnight, and then deliver the key
of the coat-room to the night-clerk. M'r Larter inquired for his satchel
March 10th, 1873, of me. In looking for his satchel and bag, I only
found his small satchel, with the check half loose, and not securely fas-
tened as I left it. It had the appearance of having been tampered with.
I offered him his satchel, which he refused to take, and on his de-

manding the check he had given me I returned it to him. Drum boarded at the Matteson House. I don't know where he slept. He left his employment as coat-room boy of said Matteson House on the night (midnight) of the 9th of March, 1873, clandestinely. Drum had charge of the coat-room from about 6 o'clock p. m. of Sunday, March 9th, 1873, until midnight; then the clerk had charge of it till 6 o'clock a. m. of March 10th, 1873, when I resumed charge.

Cross examination:

I testified in court on the first trial of this cause in June, 1873. I was employed by M'r Woodcock, the superintendent of the defendant. M'r Larter never told me of the contents of his bags. I received the key to the coat-room from the clerk the next morning, March 10th, 1873. I went off about 10 minutes past 6 p. m., March 9th, 1873.

34 JOSEPH DIXON testified:

I am a police officer in Chicago. I had William Drum arrested in Montreal, in the spring of 1873, on a charge of having stolen jewelry at the Matteson House; there was no goods found in his possession; he was discharged there. He was arrested after he returned from Canada, but there was not sufficient evidence to hold him. He has just served a term in the county jail.

I was a witness at a former trial of this case. I don't know where Drum was at that time; my impression is he was in jail. He has been under the watch of the police for some time.

Cross-examination waived.

The plaintiff here offered to show by Stewart, a policeman of Chicago, a witness in court, that he arrested William Drum in the spring of 1875, a short time previous to this trial, on a charge of stealing silver tableware from Anderson's restaurant, and by Anderson, a witness in court, that he is one of the proprietors of Anderson's restaurant, and appeared against William Drum at the examination before a police magistrate, and by Capt. Buckalew, that a portion of the silver ware stolen from Anderson's was found in said Drum's possession, and by Austin Doyle, clerk of the criminal court of Cook County, Illinois, that said Drum
35 had been indicted, tried, and convicted of stealing said silverware.

To the introduction of which testimony defendant's attorneys objected, which objection was sustained by the court, to which ruling plaintiffs' attorneys then and there excepted.

Plaintiffs then offered to show by Isaac Hartman and George Barber, witnesses in court, that William Drum, after his return from Canada, admitted to him, said Hartman, that he stole plaintiff's jewelry from the Matteson House, to the introduction of which testimony defendant's attorneys objected, which objection was sustained by the court, to which ruling the plaintiffs' attorneys then and there excepted.

Testimony of William Giles.

WILLIAM A. GILES testified:

I am a jeweler and member of the firm of Giles Bro's, doing business at # 278, Wabash avenue, Chicago, Illinois. I know the firm of H. Elcox & Co., the plaintiffs, of Newark, New Jersey. They are a good reliable firm. Have known M'r Larter personally. Have known the firm three or four years.

Testimony of Leopold Oppenheimer.

LEOPOLD OPPENHEIMER testified:

I am a member of the firm of Oppenheimer and Co., wholesale jewelers, Chicago, Illinois. I have known the firm of H. Elcox & Co. four years; they manufacture very good goods, 14 carats fine.

36 *Testimony of William Allister.*

WILLIAM ALLISTER testified:

I am a jeweler in Chicago; have known the plaintiffs for a number of years; they manufacture gold goods of fourteen carat quality.

Testimony of George A. Strong.

GEORGE A. STRONG testified:

I am a jeweler Chicago; have known the plaintiffs for three years: they manufacture first-class goods.

Cross-examination waived.

The deposition of Frederick Groesenbacker, George Pugh, and G. R. Matten, taken before James D. Cleveland, United States commissioner, Cleveland, Ohio, on behalf of plaintiffs, was then read in evidence, as follows:

Deposition of Frederick Groesenbacker.

FREDERICK GROESENBACKER testified:

I am a jeweler at Cleveland, Ohio. I know the firm of H. Elcox & Co. Frederick H. Larter called on me in the month of March, 1873; cannot recollect the exact day; he called to sell me goods. He was travelling for his firm, Elcox & Co. He must have had in all goods to the value of ten or fifteen thousand dollars (15,000.00). There were some diamonds, stone seal-rings, stone sleeve-buttons, and solid gold goods of that sort. On examination of the bill of goods I purchased of M'r Larter, I find that he was at my store March 6th last.

Testimony of George Pugh.

GEORGE PUGH testified:

37 I am a jeweler in Cleveland, Ohio. Know the firm of H. Elcox & Co. Frederick H. Larter called on me on the 6th day of March, 1873. He came to sell goods. Not taking any particular notice of the amount he had, I cannot estimate the value.

Testimony of G. R. Mutten.

G. R. MUTTEN testified:

I am a jeweler in Cleveland, Ohio. M'r Larter called on me on March 6th, 1873, on Tuesday, for the purpose of selling us goods. I should judge they were of the value of $4,000.00 or $6,000.00. These goods consisted of rings, studs, buttons, and, I think, sets of jewelry.

The deposition of Albert Fisher taken before Sidney D. Miller, United States commissioner, at Detroit, Michigan, on behalf of plaintiffs, was then read in evidence, as follows:

Deposition of Albert Fisher.

ALBERT FISHER testified:

I am a jeweler at Detroit, Michigan. On the 8th day of March, 1873, M'r Larter, one of the plaintiffs, called on me at my store in Detroit, to sell some goods. His goods that he showed me consisted of seal-rings, ladies' rings, sleeve-buttons, studs, and some full sets of jewelry, and I think some breastpins and a few neck-chains.

Cross-examination waived.

The deposition of Henry Elcox taken before Charles F. Hill,
38 United States commissioner, at New York City, State of New York, in behalf of plaintiffs, was read in evidence, as follows:

Deposition of Henry Elcox.

HENRY ELCOX, being first duly sworn, testified:

My name is Henry Elcox: am 39 years of age and a manufacturing jeweler in Newark, New Jersey, and am one of the plaintiffs to this suit. The firm of H. Elcox and Co. consists of Henry Elcox and Frederick H. Larter, and has so existed since January 1st. 1873. I have worked at the jewelry business ever since I was sixteen years of age; have carried on the business for myself since 1866.

We manufacture solid gold goods entirely. In the early part of March, 1873, M'r Larter made a trip West. This trip embraced the cities of Buffalo, Cleveland, Detroit, Chicago, Indianapolis, Cincinnati, and Pittsburgh. I cannot state with certainty the day he left; think it was Monday, March 3d, 1873; he carried with him a quantity of solid gold jewelry consisting of seal-rings, chased rings, sleeve-buttons, and studs, and eleven sets of jet jewelry.

The quality of the good was solid gold goods of twelve and fourteen carats fine. The quantity was as follows: * * *

The value of the goods foot up the sum of six thousand and
39 three hundred dollars ($6,300.00). I put up and packed the goods for M'r Larter to carry myself. The goods were packed in two paper boxes called sample-boxes; one box contained two ring-trays. These two boxes were packed and carried in a large strong leather bag; the remainder of the goods were packed in a paper box carried in a small satchel. I have, while testifying at this time referred to, a schedule of the goods made by M'r Larter to refresh my memory as to the items; the general character and quality of the goods I remember distinctly.

We carried a stock of finished goods ranging from eight to ten thousand dollars in value about that time.

On cross-examination by the counsel for the defendant, the witness testified:

I was present at the former trial and did testify in open court. I have now stated in substance all that I testified to in open court & I think much more. The questions now put to me, I think, cover much more ground and require more full and minute answers.

And thereupon the defendant gave in evidence on his behalf as follows, that is to say:

Testimony of Malek A. Loring.

MALEK A. LORING testified:

I am clerk in the Matteson House, and have been since 1868, excepting the great fire of 1871. I know the gentleman that registered his name as M'r Larter, and saw him first March 9th, 1873, when I was on duty. He registered and asked for a room. I asked him to wait a while and we would send him up.

(Register of Matteson House shown him).

This is the register in use at that time. That is the page of the register with the same heading (Exhibit A). There was not a word said about baggage and I did not see any: he may have had some, I not see it.

After the fire we had quite a number of traveling jewelers. For the purpose of keeping valuable jewelry we had a very large vault put up in the Matteson House; large enough for six men. It is in plain sight, right back of the counter in the office. The words Diebold & Kinzie are over the door. A person registering at the counter can see it. The coat-room is used for checking coats, valise, and umbrellas, and is not the baggage-room. It is used for small packages. The place for valuables and a stock of jewelry is the vault.

Were there any notices (like Exhibit B) posted on the 9th day of March, 1873, in the Matteson House?

Yes, sir.

Is that a copy (Exhibit B)?

Yes, sir.

(Counsel for plaintiffs objected to the introduction of above notice, Exhibit B, on the ground that it was not a sufficient notice under the statute of Illinois, but the court overruled the objection and permitted the notice to be read in evidence, to which ruling of the court the plaintiffs then and there excepted.)

The notices were posted long before the 9th of March, 1873; they were in the public rooms leading to the bar-room, one on each side of the cashier's desk, one back near the safe, one on the door leading into the wash-room, and one on the side of the coat-room door. I put them up. The house-carpenter put them up in the rooms up-stairs. There was a notice on the door of the bar-room, dining-room, and of the reading-room, and on front door leading from Wabash avenue. Notices were put up and I suppose they were there at the time. A notice similar to that, 14 inches square and framed, is hung right back one of the pillars in the rear of the office. I am able to state what kind of men or boys are usually employed in this country as bell and coat-room boys.

EXHIBIT B.

Matteson House regulations.

1. Persons engaging rooms will be charged for them from the time they are placed at their disposal whether occupied or not.

2. Extra charges will be made for private parlors, meals or lunches served in rooms, for fruits, confectionery, or dessert taken from the table, and for fires in private parlors and chambers.

3. All damage done to furniture or fixtures will be charged to the party occupying the apartments. Particular attention is requested to the proper use of water conveniences in apartments,

as guests will be held responsible for all damage resulting from carelessness or negligence.

4. An extra charge will be made for burning gas after 12 o'clock.

5. Guests having friends to dine will give notice at the office that seats may be provided for them at the table.

6. A separate table is provided for children and servants. Full prices will be charged for children and servants having first-class accommodations.

7. Children will not be permitted in the drawing-rooms unless accompanied by their parents.

8. Occupants of rooms must lock their doors on retiring for the night; also during the day. Keys must be left at the office.

9. All guests of the house are cautioned against leaving money, jewels, or valuables of any description in their rooms, as the proprietor will not be responsible for them if stolen. Money or valuables, properly labeled, must be deposited in the safe at the office.

10. Washing or ironing will not be permitted in the chambers. Washerwomen will not be allowed in the rooms of the house unless by permission at the office.

11. Letters, notes, or cards received for the guests of the house will be found in a box in the office corresponding in number with that of their rooms.

12. Coats, umbrellas, parcels, and all such baggage will be re-
43 ceived at the coat-room and checks given.

13. Carriages can be had by making application at the office.

14. Baths can be had in the house. Apply at the office.

15. Laundry lists furnished at the office.

16. Guests will please report at the office any inattention or misconduct on the part of the servants.

17. Guests without baggage will be required to pay in advance.

All bills payable weekly.

ROBERT HILL, *Proprietor.*

AN ACT for the protection of innkeepers.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, That hereafter every landlord or keeper of a public inn or hotel in this State who shall constantly have in his inn or hotel an iron safe in good order and suitable for the custody of money, jewelry, and other valuable articles belonging to his guests or customers, shall keep posted up conspicuously at the office, also on the inside of every entrance door of every public, sleeping, bar, reading, sitting, and parlor room of his inn or hotel, notices to his guests and customers that they must leave their money, jewelry, and other valuables with the landlord, his agent, or clerk, for safe keeping, that he may
44 make safe deposit of the same in the place provided for that purpose.

SECTION 2. That such landlord, hotel or innkeeper as shall comply with the requirements of the first section of this act shall not be liable for any money, jewelry, or other valuables of gold or silver, or rare precious stones that may be lost if the same is not delivered to said landlord, hotel or innkeeper, his agent or clerk, for deposit, unless such loss shall occur by the hand or through the negligence of the landlord, or by a clerk or servant employed by him in such hotel or inn: Provided, That nothing herein contained shall apply to such amount of money and

valuables as is usual, common, and prudent for any such guest to retain in his room or about his person.

SHELBY CULLUM,
Speaker of the House of Representatives.
FRANCIS A. HOFFMAN,
Speaker of the Senate.

RICHARD YATES, *Governor.*

Approved February 21, 1861.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, O. M. Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office. In witness whereof I have hereunto set my hand and affixed the great seal of the State, at the city of Springfield, the 26th day of February, A. D. 1861.

O. M. HATCH,
Secretary of State.

45 Q. What kind of men or boys are usually employed to act in the capacity of bell-boys?

(Objected to by plaintiffs as irrelevant. Objection was overruled by the court, who permitted the evidence, and plaintiffs then and there excepted to the ruling of the court.)

A. The generality of them are Irish boys from 14 to 20 years of age.

What kind of men are usually employed in coat-rooms?

(Objected to by plaintiffs as improper. Objection overruled by the court, who permitted the testimony. Exception by plaintiffs then and there to the ruling of the court.)

A. They are generally of an older class—from 16 to 20; the same kind of boys.

Q. What is the duty in a hotel coat room of a boy in charge of it?

(Objected to by the plaintiffs. Objection overruled by the court, who permitted the testimony, and the plaintiffs then and there excepted to the ruling of the court.)

A. To check coats. He has his regular watch, to go on at such a time and not to leave until he is relieved by the opposite watch. We have only two; none others are allowed to go in. There can't any one get into the coat-room except the coat-room boy is there. People are not allowed to go in.

Q. What was the clerk's duty?

A. The clerk has a great deal of duty to do.

The court stated: You can state generally what the duties of
46 a clerk are in contradistinction of that of the baggage and bell-boys. To which ruling of the court the plaintiffs then and there excepted.

A. The clerk receives his guests and cares for them, takes their valuables, puts them in the safe, and is held responsible; gives them checks.

Cross-examination:

Q. How did you come to remember it was the 9th day of March, 1873, when M'r Larter came?

A. I remember it perfectly well, we have the book to show.

Q. Do you mean to say that you state solely from memory?

A. Yes, sir; I remember perfectly well, I have had enough to remember it about.

Q. You don't mean to say you remember who stayed at your house on the 8th day of March, 1873?

A. Yes, sir; I can remember. M'r Larter said nothing about leaving his baggage when he came in. I do not know what he did with it while he waited for his room. I did not tell him anything what to do with it. I gave him no instructions; he asked for none. I did not call his attention to anything on the page of the register. I was standing back of the counter when he signed, close to the book. The Matteson House was opened on the 3d of February, A. D. 1873. Most everything was done; it was not perfectly finished, some painting on the boards around the house had to be done. The painting in the office was
47 not all done; some of the base boards were not finished, some painting might have been done about the pillars.

Q. Is the coat room used for all kinds of valises?

A. Gentlemen come in and carry their valises there often; it is not calculated to be used for valuable valises. It is used for travellers hand valises, and coats, and umbrellas. The clerk has general surveillance over the coat room; keeps his eye on the coat room boy, and sees that he does his duty. By the rules of the house the coat room boy is not permitted to leave the coat room, nor to allow any guest into it. Lewis Snyder, the house carpenter, put the notice up in the bedrooms when the house was first opened; I think it was the same day. I put the notices up in the public rooms two or three days after they were put up in the bed-rooms—I am not positive, but not but a short time after. To my knowledge the notices were up on the 9th of March, 1873; they should have been; I didn't look that morning perhaps.

Redirect examination:

Q. Were the notices that you posted yourself in the places that you have named posted before March 9th, 1873?

A. Yes, sir.

Q. Have you any knowledge of any of those notices which you did post having been removed from their places before M'r Larter's arrival?

48 A. No, sir.

Recross examination:

Q. Did you, before M'r Larter came, on any particular day, examine all these places where you had placed these notices?

A. Yes, sir.

Q. On what day was that?

A. Oh most every day I noticed these notices up.

Q. Do you mean to say you went to every place?

A. No, I might not have gone to every place; when I passed out of the door I always looked to see if the notices were there.

Testimony of John B. Drake.

JOHN B. DRAKE testified:

My business is, and has been for 32 years, hotel keeping. I kept the old Tremont House 19 years, and am now in the Grand Pacific.

Q. Do you know what class of persons are usually employed to have charge of the coat-room in a hotel?

(Objected to by plaintiffs, but the court overruled the objection, and permitted the evidence; to which ruling of the court the plaintiff then and there excepted).

A. We generally employ a man at wages of twenty to twenty-five dollars per month.

Q. What kind of property are they employed to handle, and do they handle?

(Objected to by plaintiff. The court stated, "You can state what is the usual class of goods put into the coat-room." To which ruling of the court the plaintiffs then and there excepted).

49 A. A light class of goods, umbrellas, and coats, and light carpet-bags; something of that kind; small valises, small baggage.

Q. Is that the usual place for valuable baggage, such as jewelry in large quantities?

(Objected to by plaintiffs, which objection was overruled by the court, who permitted the evidence, to which ruling of the court the plaintiffs then and there excepted.)

A. No, sir.

Q. Where is the usual place for that in the hotel?

A. In the safe.

Q. What were the duties of the clerk?

A. The duties of the room-clerk is to show the guest to the room; have his baggage taken to his room and attend to the wants of the guests.

Q. Who is to have charge of the valuables that a guest may have?

A. The clerk takes charge of it and gives a receipt for it always.

Cross-examination:

Small valises are sometimes checked in the coat-room when persons don't want them in their rooms. We consider the man in charge of the coat-room honest or we would not place him there; if he deceives us, that is not our fault.

Testimony of Robert Hill.

ROBERT HILL, defendant, testified:

I am the proprietor of the Matteson House. I do not know anything about plaintiff's jewelry, and never heard of it before the loss.

50 Larter was introduced to me by my clerk March 10th, 1873. The clerk said that he claimed to have lost a satchel from the coat-room, and said it contained five thousand dollars' worth of jewelry. All necessary arrangements I think had been made for keeping valuables in my house. There had been a perfect fire-proof and burglar-proof vault built at considerable expense for that purpose. That vault was in a condition to be used on the 9th of March, 1873, and indirectly back of the standing point of the clerk where he stands at his book. I never measured the door, but I should say it was very nearly six feet high and of the ordinary width of a common door—I should think nearly three feet. The coat-room is used ordinarily for small parcels, such as coats, umbrellas, canes, overcoats, and small satchels; satchels travellers would ordinarily have with them for travelling purposes, for their use; ordinary travelling baggage. We regarded it as such, and it is used for that purpose. The duties of the persons in charge of the coat-room are to receive the packages. The duties of a clerk are to see that every guest is attended to, to take charge of any valuables a guest may have. I know that I ordered notices put up all through this house, and I know that I didn't after this loss. I saw them in the office on each side of the cashier's desk. I was particular to notice them on all the rooms. I think I made the remark to M'r Larter that they were all up. I

51 know they were on this coat-room door. At that time I didn't notice to see whether they were all up, but it is my impression that they were all up. I had seen them put on all the doors in the house.

Cross examination:

Alongside this opening, do you mean to be understood that on each side of the cashier's desk these notices which you have spoken of were posted?

A. Yes, sir.

Q. So when the guest sticks his head in there he would see on each side of him three notices?

A. They are very plain to be seen. A man standing by the register could see three notices on either side; it was very plain.

Q. Who had these notices printed?

A. Mr Woodcock had the management of the house.

Q. Do you know where they were printed?

A. I don't remember; I saw them most every day, sir, that I took notice of them.

Q. I mean the first time you saw them up.

A. I noticed them as soon as they were put up; they were put up directly, on the day the house opened.

Q. They were put up below?

A. Yes, sir.

Q. Where was Drum rooming at the time he worked for you? In the house?

A. I think not, sir.

Q. Do you know where he roomed?

A. No, sir.

52 Q. Did you see him on Monday, March the 10th, 1873?

A. I did not.

Q. Didn't you have reasonable suspicions that he had stolen the property?

A. I did not.

Q. Didn't you think he had something to do with it?

A. No, sir.

Q. Why did you send Dixon after him?

A. It was suggested to me by my friends, and you, I think, Mr Larter, I think thought I ought to send for him.

Q. Didn't he leave under suspicious circumstances?

A. Not very, I think.

Q. Wasn't his pay-day on Monday, March 10th?

A. We generally pay off on the 10th of the month.

Q. Do you know whether he was there to receive his pay?

A. I guess he was not there half the time.

Q. Do you know whether the boy got the money?

A. He gave the order to a man he owed in the house; he gave that order on leaving; he had talked of going a week before.

Q. Did you go to the house where he roomed, or where you supposed he roomed, after this loss occurred?

A. I went to where I understood he roomed.

Q. Did you find him?

A. No, sir.

Q. Did you learn under what circumstances he left?

A. Very particularly.

Q. Did you learn anything about him?

A. I learned that he had roomed there, and that he hadn't been in that day.

Q. Did you learn at what time he left?

A. No, sir.

53 Q. Do you mean to say that after this loss occurred he came to your house for re-employment?

A. No, sir; he never did.

Testimony of Louis Snyder.

LOUIS SNYDER testified:

My name is Louis Snyder. I am the carpenter at the Matteson House (notice shown him, Exhibit B). I put them on the inside of every door in the sleeping rooms of the house. I put up none in the office or public room and parlors. I came there in July, 1872.

Cross-examination:

The house was opened February 3rd, 1873. There are one hundred and twenty-nine rooms for guests.

Testimony of W. F. Wentworth.

W. F. WENTWORTH testified:

My name is W. F. Wentworth. I have been in the hotel business since 1835. It is the duty of persons employed in the coat room to take charge of ordinary baggage. Valuable property is taken charge of by the clerk of the hotel. The coat room is not the place for valuables.

Testimony of Washington Libby.

WASHINGTON LIBBY testified:

My name is Washington Libby. I used to be in the hotel business in Chicago; was about the Matteson House in March, 1873. Had seen notices to guests about the office, coat room door and office desk of the Matteson House before March 10th, 1873. I have noticed the door of the vault in the Matteson House. It can be seen as you come in from the entrance on Wabash avenue.

54 The depositions John A. Matthews and John G. Ashleman, taken on behalf of plaintiffs, were then read as follows:

Deposition of John A. Matthews.

JOHN A. MATTHEWS testified:

I am twenty seven years of age; by occupation a salesman, and reside at Newark, New Jersey. I am acquainted with M'r Larter; do not know M'r Elcox except by reputation. I know the firm of H. Elcox & Co. by reputation. I have been on the lower floor of the Matteson House in Chicago, Illinois, probably three or four times; I was there on the evening of the 11th of March, 1873, and went there on the invitation of John G. Ashleman, of Chicago. I was there that evening and when M'r Larter left. When I started I had no object in view—well, when we got over there with M'r Ashleman I noticed that he was inspecting the rooms to which we had access; he then requested me to do the same. We were in the main hall leading from Wabash avenue, a small room

to the right which seemed to be used as a sitting room, bar room, and the office; and it's my impression that there is another room in there; another room off the right, but I ain't perfectly sure about it. I have not been inside of the house since last March; those rooms are all on the first floor. I did not see any notice to guests of any kind posted
55 up in any one of those rooms. We inspected all the public rooms to which there was access, except the billiard room. I couldn't say they were all the rooms.

On cross-examination by counsel for defendant the witness testified: Well, sir, we inspected the walls, the doors, both front and back, also the desk at the office, in company with M'r John Ashleman; I did not find any notice of any kind and think that I would have seen it, if there had been one. I can't swear that I visited all the rooms. I saw no notices, and if they had been there I should have noticed them. I will swear that they were not where they could be seen. We entered all the public rooms on the first floor that were open. I examined the walls, doors and the outside portion of the desk in the office. I am travelling salesman for Churchill, Lewis & Co., No. 180 Broadway, New York.

Deposition of John G. Ashleman.

JOHN G. ASHLEMAN:

I am 43 years of age, and a wholesale jeweller at Chicago, Illinois. Have known H. Elcox & Co., the plaintiffs, three or four years, and know their reputation is good.

I saw M'r Larter here on the seventh of March, 1873; I was at
56 the Matteson House on the 11th or 12th of March, 1873; went there for the purpose of meeting M'r Herring and M'r Larter at their request, to see if there were any notices posted anywhere on the lower floor; notices in regard to baggage and valuables, such as you see in hotels. I went there at the request of M'r Matthews, a New York traveller. To my knowledge I only went there once, and that was in the evening in company with M'r Matthews. I went for the purpose of seeing about those notices, about 7 o'clock in the evening. I visited the main office, gent's reading room, billiard and bar room. I looked for notices where notices in regard to baggage would naturally be posted such as over the mantels or in rear of doors without discovering any. I did not see any notice in any of the public rooms.

On cross-examination by counsel for the defendant the witness testified:

I went there at the request of M'r Herring. M'r Matthews, M'r Herring and M'r Larter were there at that time. I saw no notice; none that I could discover by close examination.

The foregoing was all the evidence introduced by the plaintiffs and defendant on the trial of this cause.

And thereupon the counsel for the plaintiffs requested the court to give written instructions to the jury in accordance with the
57 statute of Illinois; and the court refused to give said written instructions; to which ruling the plaintiffs then and there excepted. Said instructions, were presented to the court in writing when the testimony in the case was ended as aforesaid, said instructions being in the words following, to wit:

1. The jury are instructed as a matter of law that though they believe from the evidence that Larter was negligent, and that such negligence

consisted merely in placing valuable property in the custody of the servant in charge of the coat-room, and the jury find that such servant stole the property, such negligence of Larter giving him an opportunity so to do, yet the jury are instructed that such negligence was slight in comparison with the negligence of defendant in having such dishonest servant, and the plaintiffs are entitled to recover.

2. The jury are instructed as a matter of law that there can be no contributive negligence on the part of Larter, if the jury find from the evidence that his negligence consisted merely in his placing satchels into the hands of the coat-room boy, who was then a servant of defendant.

3. If the jury find from the evidence that the statute of Illinois concerning inn-keepers was fully complied with by defendant keeping posted up conspicuously on the office, also at the inside of every entrance door of every public, sleeping, bar, reading, sitting, and parlor room of his inn, notices to his guests and customers that they must leave their money, jewelry, or other valuables with defendant, his agent or
58 clerk, for safe keeping, that he (defendant) may make safe deposit of the same in the place provided for that purpose, yet if the jury find from the evidence that Drum was the servant of defendant and stole the property, such statute and such acts of defendant under it can constitute no defence to this suit.

4. If the jury believe from the evidence that Drum was the servant of the defendant, and that Drum stole the property, then none of the defences set up by the defendants can defeat this action, and the jury will find for the plaintiffs.

5. The court instructs the jury that the plaintiffs make out their case by showing that they placed their goods within the custody of the inn, and that they were lost, and the burden of proving the manner of the loss is put upon the defendant.

6. The jury are instructed as matter of law that if they find that the property of plaintiffs was in the coat-room of the defendant's inn, and was lost by theft or burglary, the burden of showing how the loss occurred is put by the law upon the defendant.

7. The jury are instructed as a matter of law that if they find from the evidence that the property of the plaintiffs was in the custody of defendant's servant who had charge of the coat-room or baggage room of defendant's inn, and was by such servant given to some other guest who called for baggage, who kept such property, and that its loss
59 occurred in that way, then the jury are instructed that they will find for the plaintiffs.

8. The jury are instructed that if they find from the evidence that valuable property was placed by plaintiffs in the custody of the boy in charge of the coat-room, and that it was lost by theft or burglary in such coat-room without any visible trace or mark showing how the loss occurred, then the burden of showing how it did occur is upon the defendant.

And the court being requested by plaintiffs' counsel to give said written instructions as aforesaid, refused to give said instructions and every one of them, except so far as they are embodied in the charge, and refused to instruct the jury as provided by the statute of Illinois. To each of such refusals and to each of said rulings of the court the plaintiffs by their counsel then and there excepted, and plaintiffs' counsel excepted then and there to the refusal of the court to instruct and to charge as requested by them in each of said written instructions.

And thereupon the court upon its own motion charged and instructed the jury orally as follows:

GENTLEMEN OF THE JURY: This is an action on the case against the defendant for negligence as an innkeeper, and to recover the value of a quantity of jewelry lost by the plaintiffs while one of them was a guest at the Matteson House, a hotel in this city kept by the
60 defendant. The undisputed facts in the case seem to be these:

The plaintiffs, Elcox and Larter, are manufacturing jewellers, doing business at Newark, New Jersey, and in the fore part of March, 1873, M'r Larter left home for a tour through several western cities with a quantity of jewelry, which he proposed selling. The proof on the part of the plaintiff tends to show that the value of the stock brought here by M'r Larter was about $6,300. This is not contradicted on the part of the defendant, and in fact there is no dispute in the testimony as to the value of the goods lost, but it rests solely upon the testimony of the plaintiff. He arrived in this city on Sunday morning at about 8 or 9 o'clock on the ninth of March, 1873, and went to the Matteson House. The jewelry was in two carpet-sacks or satchels, one a large square leather satchel or bag, containing, as M'r Larter says, about $5,000 worth of solid gold jewelry, and the other a smaller satchel, containing about $1,000 worth of jewelry, and the brushes, combs, and other conveniences which a traveller usually carries. On arriving at the Matteson House M'r Larter asked for a room, but the house being at the time full, the clerk was unable to assign him a room for from three to four hours. During the time he was waiting for the room M'r Larter placed his satchels in the coat-room and received a check therefor, as he says
61 by the directions of the clerk, although the clerk denies having given such directions, but thinks it was done as a matter of course.

Between 12 and 2 o'clock a room was assigned him on the top floor of the house and a bell-boy sent to show him to his room and carry up his baggage. The two bags were taken from the coat room and carried to M'r Larter's room. M'r Larter remained in his room some time and then came down to dinner and, before going into the dining-room for dinner, he gave the key of the room to the same bell-boy who had waited upon him to his room, directing the boy to bring down the two bags and put them in the coat-room again. And, on coming out from dinner, the boy handed him the coat-room check for the bags. M'r Larter, at that time, looked into the coat-room, as he says, and saw the two bags with one check tied around them in the coat-room. He tells you also, and is uncontradicted in this respect, that he saw the bags in the coat room two or three times after that before he went to bed, the last time being about ten o'clock, at which time the boy in charge of the coat-room told him his bags were perfectly safe, and that the coat-room would be locked up at twelve o'clock at night. Soon after this talk M'r Larter retired to his room for the night; and in the morning, after breakfast, he called at the coat-room for his satchels and only the small one could be found; and, on subsequent investigation, it was ascertained that the jew-
62 elry and some of the other contents of the small satchel had been also taken. On enquiry it was ascertained that Drum, the boy in charge of the coat room, the night before, had left the city under circumstances tending to create a suspicion that he had stolen the goods or was in some way privy thereto.

The testimony on the part of the defendant tends to show that the defendant opened his hotel in the fore part of the month of February, 1873; and that within a very few days after the opening and before M'r Larter became a guest there, notices like the one introduced in evidence were posted in the office, and all the public and sleeping rooms of the

hotel, and the plaintiff, Larter, testifies, that while his attention was not attracted to it until after his loss, yet, on the Monday morning after his loss, he saw the notice referred to in his room; he says he did not see it before that time; but, of course, it may have been there and not noticed by him.

The testimony on the part of defendant also tends to show that an ample fire and burglar proof vault or safe was provided for the safe keeping of valuables, and that it was a part of the duty of the clerk in charge of the office to take charge of valuables such as money and jewelry belonging to guests and place them in this safe and give the guests a receipt therefor.

63 The testimony on the part of the defendant also tends to show that the coat-room where these bags were deposited was only intended for the reception of common hand-baggage, such as satchels, with the usual traveller's ward robe of conveniences for travelling, such as coats, shawls, canes, and umbrellas, and that the boy in charge of said coat-room was not entrusted with the custody of valuable articles, such as money and jewelry, and that it was no part of his duty to take charge of such things.

Upon these facts, either admitted or claimed to be proved, the plaintiff claims that the defendant is shown to be liable for the value of the goods lost by the plaintiff, while the defendant contends that he is not liable for three reasons:

I. Because the goods lost were not part of the baggage of the plaintiff, but were merchandise which he was engaged in selling, of which defendant had no notice or knowledge.

II. Because the defendant had, in conformity with the statute law of this State then in force, provided a safe for the custody of valuable articles like these carried by M'r Larter and had posted notices throughout his house, as required by the law, notifying guests to have their valuables placed in this safe.

III. Because the loss occurred through the want of due care on
64 the part of M'r Larter; that the negligence of the guest so far contributed to the loss as to absolve the defendant from liability.

The general rule of law concerning the liability of inn-keepers is laid down by Parsons in his work on contract in these words: "The late and on the whole prevailing authority makes the inn-keeper an insurer of the property committed to his care against anything but the act of God and the public enemy or the negligence or fraud of the owner of the property."

The same principle is substantially laid down by the supreme court of this State in an early case, as follows: "Inn keepers are not responsible to the same extent as common carriers. The loss of the goods of a guest while at an inn will be presumptive evidence of neglect on the part of the inn-keeper or his domestics. But he may, if he can, repel this presumption by showing that there has been no negligence whatever on the part of the inn-keeper and that none is attributable to him, but that the loss is attributable to the personal negligence of the guest himself, or that it has been occasioned by inevitable accident or superior force."

The common law liability of an inn-keeper extends only to what is usually termed the baggage of the guest; that is, such articles as travellers carry for the ordinary purposes of their journey for their
65 comfort and convenience, such as clothing, necessary money for the journey, and articles of personal ornament and use, such as watches, jewelry, etc., and even the sword and pistol of a military man have been held to be part of his baggage; so, too, have been held the

books of a student, and the brushes and easel of an artist. The law supposes a person to have such articles for use on a journey; and when he becomes a guest at an inn makes the landlord responsible for their safety to the extent I have stated. But when a traveller brings to an inn valuable merchandise for the purposes of trade, he is not protected to the same extent as he is in his baggage as a traveller. If, however, under such circumstances, he notifies the landlord of the valuable nature of his baggage and the landlord accepts the custody of them, knowingly allows the guest to take such goods to his room or assents to them remaining in his house, without objection, he will be held liable under such circumstances.

Here it is conceded that the goods lost were not the personal baggage of M'r Larter as a traveller; he was, in fact, a travelling merchant, and carried his stock in trade with him, making the defendant's hotel for the time being his storehouse.

The statute of this State has provided a method by which innkeepers can, to a certain extent, relieve themselves from the strict responsibility which the common law imposes upon them. It was passed on
66 the 21st of February, 1861, and has been the law of this State substantially ever since.

The defendant claims that he complied with this statute in all respects. On this point the testimony is conflicting. The testimony on the part of the defendant tending to show that he had provided a safe, such as the law required, on which, perhaps, there is no conflict, so far as the character and capacity of the safe is concerned; and that he had duly posted notices as required by law in all of the public rooms and sleeping rooms. You will remember that the plaintiff admits that he found the notice in his room on Monday morning after he missed his goods; while the plaintiff has put in proof tending to show that there were no such notices posted in all the public rooms. It is your duty to reconcile this testimony, if you can, consistently with the truth, and if you cannot, you must determine which you will believe.

The plaintiff also contends that the notices which the defendant's witnesses say were posted, were not such as the law requires. The question of the sufficiency of the notice, that is, whether it is such a notice as the law requires is a question of law for the court. The notice in this case is headed "Matteson House regulations," and here follow a series of rules, and under rule number nine we find the following:
67 "All guests of the house are cautioned against leaving money, jewels or valuables of any description in their rooms, as the proprietor will not be responsible for them if stolen. Money or valuables properly labelled, must be deposited in the safe at the office."

As I have just said, the question of whether this is a sufficient notice under the law to be a compliance with the law in terms is a question of law for the court, and I instruct you that this notice is a sufficient compliance with law; whether it was properly posted throughout the house is a question of fact for you to determine, but the notice, if properly posted, is such a one as would relieve the landlord in cases coming within the law.

If you find that notices like this were posted in the various rooms of the hotel, as required by the law, and that a safe was provided for the safe custody of valuables, then the defendant would not be liable for the loss of the plaintiff's goods, unless delivered to the landlord or his proper clerk to be deposited in the safe for safe keeping; unless you find from the evidence that the goods in question were lost by the hand

or through the negligence of the defendant, or a clerk or servant employed by him in his said hotel.

And this brings me to consider for a moment the points chiefly
68 relied upon by the plaintiff, and that is, that the loss did occur by the hands of a servant employed in this hotel. You will remember the testimony on this point. It consists of the fact that the boy Drum was in charge of the coat room in the office, when M'r Larter last saw his two bags together, and that this boy was missing the next morning, and although a month's wages were due him he did not come for his money, and that he was subsequently found in Canada.

The defendant, however, claims to properly explain these suspicious circumstances, so far as the going away and the wages are concerned, by proof tending to show that he, Drum, had previously sold his wages to another employee, and therefore need not come on pay-day to draw them; and also that Drum had given notice of his intention to leave, and that they were expecting him to leave at any time.

If the defendant has made out to your satisfaction from the proof that he did comply with this law by providing a safe, and posting notices as required, then the plaintiff, in order to hold the defendant liable on the ground that the loss comes within the exceptions of the statute, must satisfy you from the proof that the loss did in fact occur by the hand of one of the defendant's servants employed in the hotel. The mere suspicion that Drum took the goods, or suspicious circumstances,
is not enough. The evidence should be such as to reasonably
69 satisfy your minds that the goods were so lost by the fault or hand of this servant. The burden of proof on this point is with the plaintiff; and the failure or negligence of the defendant to prosecute this boy Drum before the court on a criminal charge for stealing this property, is not evidence tending to show that the boy was guilty, or tending in any way to show that the loss occurred through the act of Drum. The defendant, M'r Hill, was no more bound to prosecute this boy for this criminal offence than any other citizen. It was a violation of the general criminal law of the land if the boy was guilty; and any citizen was as much bound to see that he was criminally prosecuted as was M'r Hill.

I come now to consider the last point made by the defendant, and that is that the goods in question were lost by reason of the want of due care on the part of the plaintiff, M'r Larter. Negligence is usually in cases like this, wholly a question of fact for the jury. Negligence is a relative term; that is, what is or is not negligence, depends upon circumstances, and you must determine from all the circumstances surrounding the transaction as disclosed in the proof, whether the plaintiff Larter's negligence contributed directly to this loss or not. Every man is bound to act with such prudence and care as it is presumed would be taken by an
ordinarily careful and prudent man under similar circumstances;
70 and a failure to so act is what is called negligence.

It is obvious that the degree of care with which a man is bound to act, must depend largely upon the degree of resposibility with which he is charged. For instance, a man who is the custodian of several thousand dollars should be expected to be much more prudent and circumspect in his conduct than one with a very small sum of money; and what might be called gross negligence in a man with valuable jewelry, or a large sum of money under his charge, might not be deemed negligence at all in a man with but little money and no jewelry or valuables in his charge.

The admitted facts in this case are that M'r Larter placed these two

bags containg this large quantity of valuable jewelry first in the coat-room, then took them to his room with the aid of the bell-boy, then left them in his room and sent the bell-boy after them with directions to place them in the coat-room. Then by frequent looks and enquiries in regard to his bags which he admits making, he may have betrayed such solicitude for their safety as called attention to them unnecessarily. One of these bags contained over $5,000 worth of jewelry, and must necessarily have betrayed its contents, and to some extent its value by its
71 weight. The conversation with this boy late in the evening, and the acceptance of this boy's voluntary assurances that the bags were perfectly safe, and there was no doubt of their safety where they were, are all circumstances bearing upon the question of negligence, and to be considered by you, and it is for you to say whether a person of ordinary prudence with so responsible a trust, would have so conducted himself.

Travellers must be presumed to know the relative duties of the different classes of employees about a hotel, that is to say, they must be presumed to know that they have no right to entrust their baggage to the care of the table waiter, or to the hostler, from the fact that it is not the duty of such employees to look after or care for the baggage, or take the custody of it; and it is for you to say whether the leaving of this baggage by the plaintiff in this coat-room was not of itself an act of negligence, especially when he failed to inform any one of its contents. If he had said to the landlord or the clerk in charge of the office, "my satchel is in that coat-room, it contains valuable jewelry"; and if the landlord or clerk had left it there after such information, they might be held to have assented to accept it there, and to have left it themselves in the charge of the servant in care of the coat-room: but it is a question for you to consider whether it was not such negligence
72 as might amount to a fraud on the defendant for the plaintiff to leave this valuble property in such a place without informing the defendant or his proper clerk in the office, of its value, so that they might govern themselves accordingly.

As I said before, negligence is a relative or comparative term. Probably if a guest at a hotel should deposit his money or jewelry with a table-waiter, or cook, or bell boy, without direction to do so from the landlord, or clerk in charge, or leave his satchel containing money and valuables unprotected in the halls or public passages, or leave his money exposed in his room, and his room unlocked, no one would hesitate to say that such an act was an act of negligence to such an extent as to excuse the landlord in case of loss. And it is for you to say in the light of the proof, and of your own knowledge and experience, of the manner in which large city hotels are necessarily conducted, whether trusting valuable packages such as jewelry like this of the plaintiff, to the care of the coat-room boy, was or was not an act of negligence for which the party should suffer the consequences rather than the landlord.

It is true as has been urged by counsel that the innkeeper is responsible for the acts of his servant, but that does not justify a guest at
73 a hotel in entrusting valuable merchandise to the care of a subordinate servant, whose line of duty was not the charge or keeping of such valuables without the knowledge of the landlord, or of his clerk in charge.

The evidence has disclosed to you to some extent the duties of the servants or employees of the hotel in charge of the coat-room; and it is for you to say in the light of the evidence whether a prudent man would have entrusted to such a servant and such a place the keeping

of valuable packages like these lost by Mr. Larter, without at least first making enquiries to ascertain whether any more secure place of deposit could be provided.

In conclusion then, if you are satisfied from the proof that the loss in this case occurred through the want of due care on the part of M'r Larter, under the circumstances then the defendant is not liable, even if you should believe from the proof that the loss occurred by the fraud or the act of the boy Drum. And if you find from the evidence that the goods in question were not travellers' baggage but merchandise, and intended for such by the plaintiff, then the defendant is not liable, unless the defendant or some one in his employ, whose duty it was to attend to such matters, was informed of the contents of the bags and accepted in some form the custody of them.

As has been said and urged on the part of the plaintiff, the loss
74 of the goods makes a prima facie case of liability, and the question for you to determine is, whether the defendant has by the evidence in the case excused himself from this prima facie evidence of liability by showing negligence on the part of the plaintiff.

The form of your verdict, gentlemen, will be guilty or not guilty. If you say guilty then you should fix the damages at the value of the property lost.

To the giving of said charge orally the plaintiffs then and there excepted.

To the giving of each and all of which charge and instructions the plaintiffs, by their counsel, then and there excepted.

And the plaintiffs, by their counsel, then and there excepted specially to the following parts of said charge and instructions, viz:

1. I instruct you that this notice (meaning Exhibit A aforesaid) is a sufficient compliance with the law.

2. If the defendant has made out to your satisfaction from the proof that he did comply with this law by providing a safe, and posting notices as required, then the plaintiff, in order to hold the defendant liable on the ground that the loss comes within the exceptions of the statute, must satisfy you from the proof that the loss did in fact occur by the hand of one of the defendants' servants employed in the hotel.
75 The mere suspicion that Drum took the goods or suspicious circumstances is not enough. The evidence should be such as to reasonably satisfy your minds that the goods were so lost by the fault or hand of this servant. The burden of proof on this point is with the plaintiffs; and the failure or negligence of the defendant to prosecute this boy Drum before the court on a criminal charge for stealing this property, is not evidence tending to show that the boy was guilty or tending in any way to show that the loss occurred through the act of Drum.

3. In conclusion then, if you are satisfied from the proof that the loss in this case occurred through the want of due care on the part of M'r Larter, under the circumstances, then the defendant is not liable even if you should believe from the proof that the loss occurred by the hand or the act of the boy Drum.

4. And if you find from the evidence that the goods in question were not travellers' baggage but merchandise, and intended for such by the plaintiff, then the defendant is not liable unless the defendant or some one in his employ, whose duty it was to attend to such matters, was informed of the contents of the bags and accepted in some form the custody of them.

And the plaintiffs' counsel requested the court to charge the jury as specified in the written instructions which they asked the court
76 to give as aforesaid, but the court refused; to which ruling the plaintiffs then and there excepted.

And the foregoing were all the instructions and charges given or requested by plaintiffs and defendant.

And thereupon the jury rendered a verdict for the defendant; whereupon the plaintiffs, by their counsel, then and there moved the court to set aside the verdict so rendered and grant a new trial of this cause and filed the following reasons in writing for their motion, which said motion and reasons are heretofore set out in this record:

77 But the court denied the motion and gave judgment on the verdict for the defendant, to which decision of the court in denying such motion the plaintiffs, by their counsel, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the plaintiffs tender this their bill of exceptions, and pray that the same be signed and sealed by the judge of this court, pursuant to the laws of the United States in such case made, which is done accordingly.

[SEAL.] H. W. BLODGETT,
Judge.

(Endorsed:) Filed May 22, '75. W'm H. Bradley, cl'k.

And afterwards, to wit, on the 17th day of June, A. D. 1875, said plaintiff, by his attorneys, filed in said clerk's office his bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

HENRY ELCOX AND FREDERICK H. LARTER, copartners, doing business under the firm name and style of H. Elcox & Co., pl'ffs,
vs.
ROBERT HILL, DEF'T.

78 Know all men by these presents that we, Henry Elcox and Frederick H. Larter, of the city of Newark, in the State of New Jersey, and Consider H. Willett and Frederick A. Herring, of the city of Chicago, in the State of Illinois, are held and firmly bound unto Robert Hill, of said city of Chicago, in the sum of five hundred dollars ($500.00), to be paid to the said Robert Hill, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 11th day of June, A. D. 1875.

Whereas the above-named Henry Elcox and Frederick H. Larter have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Henry Elcox and Frederick H. Larter shall prosecute their said writ of error to effect and answer all costs if they shall fail to

make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

HENRY ELCOX. [SEAL.]
FREDERICK H. LARTER. [SEAL.]
79 CONSIDER H. WILLETT. [SEAL.]
FREDERICK A. HERRING. [SEAL.]

Approved.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 17, 1875. W'm H. Bradley, cl'k.

80 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court, in the cause wherein Henry Elcox and Frederick H. Larter are the plaintiffs, and Robert Hill is the defendant, as the same appears from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this 18th day of January, A. D. 1876, and of our Independence the 100th year.

[SEAL.] WM H. BRADLEY, *Clerk.*

81 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Henry Elcox and Frederick H. Larter, plaintiffs, and Robert Hill, defendant, in an action of trespass on the case, a manifest error hath happened, to the great damage of the said Henry Elcox and Frederick H. Larter, as by their complaint appears, and it *is* being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1875, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth year.

WM H. BRADLEY,
Clerk Circuit Court U. S. Nor. Dist. Ills.

(Indorsed:) Supreme Court of the United States. Henry Elcox & Frederick H. Larter vs. Robert Hill. Writ of error.

82 UNITED STATES OF AMERICA, ss.

To Robert Hill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Henry Elcox and Frederick H. Larter, copartners, doing business under the firm name and style of H. Elcox & Co., are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Chicago, in the northern district of Illinois, circuit court of the United States, this 16th day of August, A. D. 1875.

H. W. BLODGETT,
Judge.

Service of above accepted by copy this 16th Aug., 1875.
A. B. JENKS,
Att'y for Rob't Hill.

(Indorsed:) United States Supreme Court. Elcox et al. vs. Hill. Citation. M. W. Fuller, of counsel. Willett & Herring, pl'tiff's' att'ys.

(Indorsement on cover:) No. 347. Henry Elcox and Frederick H. Larter, plaintiffs in error, vs. Robert Hill. N. Illinois C. C. U. S. Filed 21 January, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1878.

HENRY ELCOX AND FREDERICK H. LARTER,
Plaintiffs in Error,

vs.

ROBERT HILL,
Defendant in Error.

Brief and Argument for Plaintiffs in Error.

WILLETT & HERRING, and
Att'ys for Plaintiffs in Error.

MELVILLE W. FULLER,
Of Counsel.

CHICAGO:
PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.

1878.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1878.

HENRY ELCOX AND FREDERICK H. LARTER,
Plaintiffs in Error,
vs.
ROBERT HILL,
Defendant in Error.

STATEMENT.

This is an action of trespass on the case for loss of goods at an inn.

Plaintiffs in error reside at Newark, New Jersey, and compose the firm of H. Elcox & Co., manufacturers of solid gold jewelry. Frederick H. Larter, one of the plaintiffs in error, left New York March 4th, 1873, on a trip West, to sell goods for the firm; he arrived at Chicago on Sunday, March 9th, 1873, and stopped at the Matteson House, a hotel in Chicago. (P. Rec., p. 11.)

The goods he had consisted principally of rings, together with buttons, sets, studs and a few seals, all solid gold goods, 12 and 14 carats fine, and he carried them in two satchels or traveling bags, one a large square leather bag, and the other a small satchel.

He came to the Matteson House in the forenoon of Sun-

day, March 9th, 1873, placed his bags upon the counter, registered and asked for a room. The clerk said he could not give Larter a room then, but would after a while, and requested Larter to have his bags checked and put in check-room. Larter did so. At 1:30 P. M., a room was assigned Larter; he and a bell boy took the bags to his room. After remaining an hour in his room, Larter came down to the office, gave the key to his room to the same bell boy, and asked him to bring his bags down, re-check them and give Larter the checks. (P. Rec., p. 12.)

Larter then went to dinner, and on coming out from dinner, the boy gave him a check for the bags. Larter looked into the check-room and saw both bags properly checked, the handles being checked together by the strap of one check. When he came in to tea, and also upon returning from church, about 10 o'clock P. M., he saw the bags in the check-room as they were put there in the afternoon. Upon his looking into the check-room at 10 o'clock P. M., the boy then on duty, and who was outside the check-room, (William Drum), came up to Larter and assured him that everything would be safe there; that the room was locked up at 12 o'clock at night, and the key handed in to the night clerk of the house. Upon this Larter rested satisfied, and went to his room to bed. (P. Rec., p. 12.)

Upon calling for his bags at 8 o'clock, the following morning, the larger bag and contents could not be found, and the small bag, still having the check strap attached to it, was found to have been rifled of its contents. The total value of the goods lost is $6,303.65.

Larter at once reported his loss to the clerk, Woodcock, and asked of Michael Kelley, (who was in charge of the check-room then), the clerk, Mr. Woodcock, and Mr. Hill, the proprietor, where the boy, Drum, was, who was on duty Sunday night. None could tell him where

the boy Drum was, nor where he roomed. (P. Rec., p. 12.)

When Larter was at police head-quarters, a short time afterwards, reporting his loss, the clerk, Woodcock, came in, stating that he had just found out where Drum roomed, that he, with one or two companions, had hastily left that night, reporting that they were going to some place far West, and that they had left in such haste as to leave part of their clothing behind, and had paid a month's rent in advance, and the month had not expired. On inquiry it was found that there was a month's wages due Drum, March 10th, 1873, and he had not been paid when he left.

Drum had charge of check-room from 6 o'clock P. M., until 12 o'clock at night, March 9th, 1873; that he left the city under circumstances tending to create a suspicion that he had stolen the goods, or was in some way privy thereto.

He was followed by officer Dixon, (P. Rec., p. 15), to Montreal, Canada, to where he had fled, brought back to Chicago, and commited to await the action of the grand jury. (P. Rec., p. 12.)

ASSIGNMENT OF ERRORS.

I.

The court erred in refusing to allow plaintiff in error to show by Isaac Hartmann and George Barber, witnesses in court, that William Drum, after his return from Canada, admitted to him, said Hartmann, that he stole plaintiff's jewelry from the Matteson House. (P. Rec., p. 15.)

II.

The court erred in refusing to instruct as requested by plaintiff, as follows, viz:

1ST INSTRUCTION.

The jury are instructed, as a matter of law, that though they believe, from the evidence, that Larter was negligent, and that such negligence consisted merely in placing valuable property in the custody of the servant in charge of the coat-room, and the jury find that such servant stole the property, such negligence of Larter giving him an opportunity so to do, yet the jury are instructed, that such negligence was slight in comparison with the negligence of defendant in having such dishonest servant, and the plaintiffs are entitled to recover. (P. Rec., p. 25.)

III.

The court erred in refusing to instruct as requested by plaintiffs, as follows:

2ND INSTRUCTION.

The jury are instructed, as a matter of law, that there can be no contributive negligence on the part of Larter, if the jury find, from the evidence, that his negligence consisted merely in his placing satchels into the hands of the coat-room boy, who was then a servant of defendant. (P. Rec., p. 26.)

IV.

The court erred in refusing to instruct as requested by plaintiffs, as follows:

3RD INSTRUCTION.

If the jury find, from the evidence, that the statute of Illinois, concerning inn-keepers, was fully complied with by the defendant, keeping posted up conspicuously on the office, also at the inside of every entrance door of every public, sleeping, bar, reading, sitting and parlor room of his inn, notices to his guests and customers that they must leave their money, jewelry, or other valuables with

defendant, his agent or clerk, for safe keeping, that he (defendant), may make safe deposit of the same in the place provided for that purpose, yet, if the jury find, from the evidence, that Drum was the servant of defendant, and stole the property, such statute and such acts of defendant under it can constitute no defense to this suit. (P. Rec., p. 26.)

V.

The court erred in refusing to instruct as requested by plaintiffs, as follows:

4TH INSTRUCTION.

If the jury, believe, from the evidence, that Drum was the servant of defendant, and that Drum stole the property, then none of the defenses set up by the defendant can defeat this action, and the jury will find for the plaintiffs. (P. Rec., p. 26.)

VI.

The court erred in refusing to instruct as requested by plaintiffs, as follows:

5TH INSTRUCTION.

The court instructs the jury, that the plaintiffs make out their case by showing that they placed their goods within the custody of the inn, and that they were lost, and the burden of proving the manner of the loss is put upon the defendant. (P. Rec., p. 26.)

VII.

The court erred in refusing to instruct as requested by plaintiffs, as follows:

6TH INSTRUCTION.

The jury are instructed, as a matter of law, that if they find that the property of plaintiffs was in the coat-room of

defendant's inn, and was lost by theft, or burglary, the burden of showing how the loss occurred is put, by the law, upon the defendant. (P. Rec., p. 26.)

VIII.

The Court erred in refusing to instruct, as requested by plaintiffs, as follows:

8TH INSTRUCTION.

The jury are instructed that if they find, from the evidence, that valuable property was placed by plaintiffs in the custody of the boy in charge of the coat-room, and that it was lost by theft or burglary in such coat-room, without any visible trace or mark showing how the loss occurred, then the burden of showing how it did occur is upon the defendants. (P. Rec., p. 26.)

IX.

The Court also erred in instructing the jury as follows:

1. I instruct you that this notice (meaning Exhibit A, aforesaid), is a sufficient compliance with law. (P. Rec., p. 32.)

X.

The Court also erred in instructing the jury as follows:

2. If the defendant has made out to your satisfaction, from the proof, that he did comply with this law by providing a safe, and posting notices as required, then the plaintiffs, in order to hold the defendant liable on the ground that the loss comes within the exceptions of the statute, must satisfy you from the proof, that the loss did, in fact, occur by the hand of one of the defendant's servants employed in the hotel. The mere suspicion that Drum took the goods, or suspicious circumstances, is not enough. The evidence should be such as to reasonably satisfy your minds that the goods were so lost by the fault

or hand of this servant. *The burden of proof on this point is with the plaintiffs*, and the failure or negligence of the defendant to prosecute this boy Drum before the court on a criminal charge for stealing this property, is not evidence tending to show that the boy was guilty, or tending in any way to show that the loss occurred through the act of Drum. (P. Rec., p. 32).

XI.

The Court also erred in instructing the jury as follows, viz:

3. In conclusion, then, if you are satisfied, from the proof, that the loss in this case occurred through the want of due care on the part of Mr. Larter, under the circumstances, then the defendant is not liable, even if you should believe, from the proof, that the loss occurred by the hand or the act of the boy Drum. (P. Rec., p. 32).

XII.

The Court also erred in instructing the jury as follows:

4. And if you find, from the evidence, that the goods in question were not traveller's baggage, but merchandise, and intended for such by the plaintiffs, then the defendant is not liable, unless the defendant, or some one in his employ whose duty it was to attend to such matters, was informed of the contents of the bags, and accepted in some form the custody of them. (P. Rec., p. 32).

XIII.

The Court below erred in overruling plaintiffs' motion for a new trial. (P. Rec., pp. 10 and 33).

XIV.

The Court erred in overruling plaintiffs' objection to the introduction of Exhibit B, (P. Rec., pp. 18, 19) by defendant, on the ground that it was not a sufficient notice

under the statute of Illinois, and in permitting it to be read in evidence. (P. Rec., p. 18).

BRIEF AND ARGUMENT.

First point.

The Court refused to charge that the burden of proof of showing what became of the property, after it had been placed into the custody of defendant, and was lost, is on the defendant; as requested in plaintiffs' 6th and 5th refused instructions, (P. Rec., p. 26), as follows, viz:

6th. "The jury are instructed as matter of law, that if "they find that the property of plaintiffs was in the coat-"room of the defendant's inn, and was lost by theft or "burglary, the burden of showing how the loss occurred, "is put by the law upon the defendant."

5th. "The Court instructs the jury that the plaintiffs "make out their case by showing that they placed their "goods within the custody of the inn, and that they were "lost, and the burden of proving the manner of the loss is "put upon the defendant."

We claim that the plaintiffs made out their case by showing that they placed their goods within the custody of the inn, and that they were lost, and the burden of proving the manner of the loss is put upon the defendant.

If goods are placed in the custody of an innkeeper and lost, then *prima facie* the innkeeper is liable, and the *onus* lies on him to show the contrary.

Richmond v. *Smith*, 8 Barn. & Cres., 9.
Bennett v. *Mellor*, 5 Term., Rep., 273.
Howth v. *Franklin*, 20 Tex., 802.
Hill v. *Owen*, 5 Blackf., 323.

Inn-keepers are under the same liability as common carriers. They are insurers of the property of their guests committed to their care, and are liable for its loss, or any injury done thereto, not caused by the act of God, the public enemy, or the neglect or fault of the owner or his servants. Upon proof of loss, the burden of bringing the case within the exceptions to his liability, is upon the inn-keeper, and proof of the strictest care on his part avails him nothing, if he falls short of this.

Hulett v. *Swift*, 33 N. Y., 572.
Norcross v. *Norcross*, 53 Me., 169.
Richmond v. *Smith*, 8 B. & C. 9.
Mason v. *Thompson*, 9 Pick., 280.
Shaw v. *Bury*, 31 Me., 479.
Kent Com., 4th Ed., (star paging), 594.
Rumsey v. *Leland*, 43 N. Y., 541.
Piper v. *Nelson*, 21 Wendell, 284.

Second Point.

The court refused to instruct the jury, that if the statute of Illinois (Rev. Stat. Ill. 1874, p. 583) concerning inn-keepers, had been fully complied with on the part of the defendant, yet if the jury find from the evidence that Drum was the servant of defendant, and stole the property, such statute and such acts of defendant under it can constitute no defense to this suit, as requested in plaintiffs' third refused instruction, (P. Rec., p. 26) as follows, viz:

3d. "If the jury find from the evidence, that the statute of Illinois concerning inn-keepers was fully complied with by defendant keeping posted up conspicuously on the office, also at the inside of every entrance door of every public, sleeping, bar, reading, sitting and parlor

"room of his inn, notices to his guests and customers that "they must leave their money, jewelry, or other valuables "with defendant, his agent or clerk, for safe keeping, that "he (defendant) may make safe deposit of the same in the "place provided for that purpose, yet if the jury find from the "evidence that Drum was the servant of defendant, and "stole the property, such statute and such acts of defend-"ant under it can constitute no defense to this suit."

In *Wilkins* v. *Earle*, 44 N. Y., 190, HUNT C., says:

"May the inn-keeper say that he has been robbed, and "that he is thereby excused? Who has robbed him, a "stranger, or his servant? May he say that the amount "is too large? He has ample means of protecting it. If "his servants and himself are honest, the money is safe in "its deposit. This honesty he is bound to *guarantee*. The "guest is quite in the power of the host, and unless the "ancient rule is maintained, the danger to the public will "be great. I see nothing in the present condition of soci-"ety, or modes of doing business, that calls for its relax-"ation."

An inn-keeper is presumptively responsible for all injuries happening to the goods of his guests, and by them intrusted to his care, and he cannot exonerate himself, except by showing that he did all to insure that safety which it was in his power to do, and that no default is attributable to his servants.

Red. on Car., § 595.
Johnson v. *Richardson et al.*, 17 Ill., 302.
Edwards on Bailments, 402.
Story " " Art. 7, § 470, § 472.
Hulett v. *Swift*, 33 N. Y., 172.
Norcross v. *Norcross*, 53 Me., 163.

An inn-keeper is bound to provide honest servants, and

to exercise an exact vigilance over all persons coming into his house as guests or otherwise.

House v. *Tully*, 62 Pa. St., 92.
Story on Bail'ts, § 471.
Packard v. *Northcraft's Adm'r*, 2 Metc., 442.

The statute referred to (in the above 3d refused instruction) reads as follows :

§ 1. "That hereafter every landlord or keeper of a "public inn or hotel in this State, who shall constantly have "in his inn or hotel an iron safe, in good order, and suita- "ble for the safe custody of money, jewelry and other valu- "able articles, belonging to his guests or customers, shall "keep posted up conspicuously, on the office, also at the in- "side of every entrance door of every public, sleeping, "bar, reading, sitting and parlor room of his inn or hotel, "notices to his guests and customers that they must leave "their money, jewelry or other valuables, with the land- "lord, his agent or clerk, for safe keeping, that he may "make safe deposit of the same in the place provided for "that purpose."

§ 2. "That such landlords, hotel or inn-keepers as shall "comply with the requirements of the first section of this "act, shall not be liable for any money, jewelry or other "valuables, of gold, silver, or rare and precious stones, that "may be lost, if the same is not delivered to said landlord, "hotel or inn-keeper, his agent or clerk, for deposit, *unless* "*such loss shall occur by the hand or through the negligence* "*of the landlord, or by a clerk or servant employed by him* "*in such hotel or inn :* Provided, that nothing herein con- "tained shall apply to such amount of money and valuables "as is usual, common and prudent for any such guest to "retain in his room or about his person." (Rev. Stat. Ill. 1874, p. 583.)

It is only necessary, on this point, to refer the Court to

the italicized portion of the 2d section of the act quoted above, and referred to in the said instruction, to show that the law was correctly stated therein.

THIRD POINT.

It was error for the Court to instruct the jury that "if "you are satisfied from the proof that the loss in this case "occurred through the want of due care on the part of "Mr. Larter, under the circumstances, then the defendant "is not liable, even if you should believe from the proof "that the loss occurred by the hand or the act of the boy "Drum." (P. Rec., p. 32.)

There is no evidence of any want of due care on the part of Mr. Larter. On the other hand, the testimony shows conclusively that Larter was very careful. He placed his satchels in the hands of the coat-room boy, who had charge of satchels, &c., and gave checks for the same. Larter saw that they were properly checked, looked into the coat-room several times during the course of the evening of the night they were stolen, and saw that they were all right, (P. Rec., p. 12); and upon being assured by the boy Drum in charge thereof, that the room in which they were would be locked up at 12 o'clock at night, and the key given to the clerk, Larter retired, resting satisfied. (P. Rec., p. 12.) He saw no safe, and did not know there was one in the hotel before the goods were lost. (P. Rec., p. 13.) He did not disclose the contents of the satchels before the loss, but handed them, at the request of the clerk of the hotel, to the employee of defendant, who had charge of satchels, and he gave Larter checks therefor.

Larter was guilty of no contributory negligence by placing the goods into the hands of the servant of defendant, who had charge of satchels in the hotel. The testi-

mony tends to prove that this boy Drum stole the goods. The defendant was bound to provide honest servants. No act of omission, or want of proper precaution on the part of Larter, can excuse the dishonesty of defendant's servant, any more than that of the defendant himself.

FOURTH POINT.

It was error for the court to instruct the jury that if they find, from the evidence, that the goods in question were not traveler's baggage, but merchandise, and intended for such by the plaintiff, then the defendant is not liable, unless the defendant, or some one in his employ, whose duty it was to attend to such matters, was informed of the contents of the bags, and accepted, in some form, the custody of them. (P. Rec., p. 32.)

The liability of an inn-keeper is not confined to personal baggage, but extends to all merchandise and whatever the guest may find it convenient to carry on his journey.

Berkshire Woolen Co. v. *Proctor*, 7 Cush., 417.
Wilkins v. *Earl*, 44 N. Y., 172.
House v. *Tully*, 62 Pa. St., 92.
Piper v. *Manny*, 21 Wend., 282.
Red. on Car. & Bail'ts, § 605.
Hulett v. *Swift*, 33 N. Y., 172.
1 E. D. Smith, (N. Y.) p. 54.

"The place where goods are deposited is not the test, "it is whether they are in the custody of the inn-keeper "or at the risk of the guest."

NELSON, C. J., in *Piper* v. *Manny*, 21 Wend., 283. Also
Calye's Case, 1 Smith's L. C., 194, and Eng. Cases, in note.

Coggs v. *Bernard*, St. & Am. Cases, 308.
Red. on Car. & Bail'ts, § 600.
Jones on Bail'ts, 95
Story on Bail'ts, § 471.

Fifth Point.

The court erred in refusing the plaintiffs "to show, by "Isaac Hartman and George Barber, witnesses in court, "that William Drum, after his return from Canada, admit- "ted to him, said Hartman, that he stole plaintiffs' jewelry "from the Matteson House." (P. Rec., p. 15.)

1 Greenl. on Ev., § 215.

"It is generally agreed that *deliberate confessions* of guilt "are among the most effectual proofs in the law. * * * * "Such confessions, so made by a prisoner, to any person, "at any moment of time, and at any place, subsequent to "the perpetration of the crime, and previous to his exam- "ination before the magistrate, are, at common law, re- "ceived in evidence, as among *proofs of guilt*."

As this proffered testimony would have been proper on the trial of Drum for a criminal charge of stealing these goods, it was proper on the trial of this cause, as tending to prove Drum's guilt, which, when fully proved by testimony sufficient to have convicted Drum, would have established defendant's liability, beyond any question.

Sixth Point.

The court erred in refusing plaintiffs' motion for a new trial. The defendant sets up the statute of Illinois, limiting the common law liability of inn-keepers.

Rev. Stat. Ill. 1874, p. 583.

It is incumbent on him to show, therefore, a strict conformity to the requirements of this statute.

Ramsey v. *Leland*, 43 N. Y., 539.
Hyatt v. *Taylor*, 42 N. Y., 258.

And, this strict conformity he is bound to show, by a preponderance of testimony, which he has failed to do.

Seventh Point.

The court erred in instructing the jury as follows: "I "instruct you that this notice (meaning Exhibit A, (P. "Rec., p. 12,) aforesaid,) is a sufficient compliance with the "law." (P. Rec., p. 32.)

The notice referred to in this part of the Judge's instruction is evidently Exhibit B, (P. Rec., p. 18,) as Exhibit A is only a copy of what appeared on the hotel register.

But is Exhibit B a sufficient compliance with the law?

The statute says:

Section 1. "Every landlord * * * * shall keep "posted up conspicuously at the office, also on the inside "of every entrance door of every public, sleeping, bar, "reading, sitting and parlor room of his inn or hotel, "notices to his guests and customers that they must leave "their money, jewelry, and other valuables, with the land-"lord, his agent, or clerk, for safe keeping, that he may "make safe deposit of the same in the place provided for "that purpose."

The first part of the section provides for a safe in the hotel, and the latter part defines the kind of notice the landlord shall give, and where it is to be posted up. The notice referred to in the instruction is one of a series of seventeen paragraphs, headed "Matteson House Regula-

tions," it being the ninth paragraph or regulation, and reads as follows:

"All guests of the house are cautioned against leaving "money, jewelry, or valuables of any description in their "rooms, as the proprietor will not be responsible for them "if stolen. Money or valuables, properly labeled, must "be deposited in the safe at the office." (P. Rec., p. 19.)

We object to it being a good notice, in law, first, because it appears in the middle of a series of seventeen regulations, and is therefore not as conspicuous as the law contemplates; secondly, because it is not in the form nor language of the statute. This statute requires a strict conformity.

Eighth Point.

The court erred in refusing to instruct as requested by plaintiffs, in plaintiffs' first, fourth and eighth instructions (P. Rec., pp. 25, 26), as follows, viz:

1. "The jury are instructed, as a matter of law, that "though theybelieve, from the evidence, that Larter was "negligent, and that such negligence consisted merely in "placing valuable property in the custody of the servant "in charge of the coat-room, and the jury find that such ser- "vant stole the property, such negligence of Larter giving "him an opportunity so to do, yet the jury are instructed "that such negligence was slight in comparison with the "negligence of defendant in having such dishonest servant, "and the plaintiffs are entitled to recover."

4. "If the jury believe, from the evidence, that Drum "was the servant of the defendant, and that Drum stole "the property, then none of the defences set up by the "defendant can defeat this action, and the jury will find for "the plaintiffs."

8. "The jury are instructed that if they find, from the "evidence, that valuable property was placed by plaintiffs "in the custody of the boy in charge of the coat-room, "and that it was lost by theft or burglary in such coat-"room, without any visible trace or mark showing how "the loss occurred, then the burden of showing how it did "occur is upon the defendant."

And the court erred in giving the second part of his instruction, specially excepted to by plaintiffs (P. Rec., p. 32).

The principles contended for, as enunciated in plaintiffs' 1st, 4th and 8th refused instructions are, first: that, although the plaintiff, Larter, was negligent in this—that he placed valuable property in the custody of the servant of defendant in charge of the coat-room in defendant's hotel, yet if such servant stole it (such negligence of plaintiffs giving him an opportunity so to do), then such negligence was slight in comparison with defendant's negligence in having such dishonest servant, and plaintiffs are entitled to recover; second: that if such property, placed in defendant's custody as aforesaid, is lost by theft or burglary, without any visible trace or mark showing how the loss occurred, then the burden of showing how it did occur is upon the defendant; third: if Drum was the servant of defendant, and that Drum stole the property, then none of the defenses set up by the defendant can defeat this action, and the jury will find for the plaintiffs.

We contend that it was manifest error for the court to refuse to give the said 1st, 4th and 8th instructions requested to be given by plaintiffs, and especially the 8th; and that it was manifest error for the court to charge the jury as he did in that part of his charge, marked 2d, specially excepted to by plaintiffs, (P. Rec., p. 32), as follows:

2. "If the defendant has made out to your satisfaction, "from the proof, that he did comply with the law by pro- "viding a safe, and posting notices as required, then the "plaintiffs, in order to hold the defendant liable on the "ground that the loss comes within the exceptions of the "statute, must satisfy you, from the proof, that the loss "did in fact occur by the hand of one of the defendant's "servants employed in the hotel. The mere suspicion "that Drum took the goods, or suspicious circumstances, "is not enough. The evidence should be such as to rea- "sonably satisfy your minds that the goods were so lost "by the fault or hand of this servant. *The burden of "proof on this point is with the plaintiffs*, and the failure "or negligence of the defendant to prosecute this boy "Drum before the court on a criminal charge for stealing "this property, is not evidence tending in any way to show "that the loss occurred through the act of Drum."

We submit that the burden of proof of showing how the *loss* occurred was upon the defendant.

The proof showed that the property was placed in defendant's custody; that the two satchels containing it were checked by Larter at the clerk's request, and placed into the coat-room of defendant's hotel, and were there safe and secure as late as 10 o'clock on Sunday night, March 9th, A. D. 1873. The boy Drum had charge of that coat-room that night. He assured Mr. Larter that the coat-room would be locked up at 12 o'clock at night, and the key given to the clerk. On the following morning, upon Mr. Larter calling for his satchels, the larger one and contents were missing, and the smaller one was found rifled of its contents. The boy Drum was inquired for, and it was ascertained that he had suddenly left his lodgings and the City of Chicago that Sunday night, or early Monday morning, under very suspicious circumstances; he was followed by officer Dixon to Canada and brought back to

Chicago; and plaintiffs offered to prove by Mr. Hartman and Mr. Barber, witnesses in court on the trial, that Drum had admitted to Hartman that he, Drum, had stolen the goods in question; and plaintiffs offered to prove by other witnesses that Drum had been convicted of larceny, and was a thief. (P. Rec., p. 15).

Can there be any reasonable doubt that Drum, the employee of defendant, stole these goods?

Under the testimony, which stands uncontradicted, can the loss be accounted for in any other reasonable manner?

The plaintiffs left the property in the custody of defendant's inn, in the hands of defendant's employee, who had charge of the room where it was placed, checked, and in charge of Drum.

Did defendant account for, or attempt to account for, the loss of this property in any manner whatsoever?

Drum was brought back to Chicago by officer Dixon; he remained here for some time; defendant knew that he was in Chicago. Why did not defendant learn from Drum what became of these goods left in his charge on that Sunday night?

The only reason why defendant failed to use Drum as a witness in this case, is that he was convinced *that Drum stole the goods.*

Had there been *any* other way in which to account for this loss, who but Drum could have known it, or shown it?

Why did defendant fail, then, to either take the deposition of, or subpœna *this* servant, when he had so many other of his employees as witnesses? It was because, if Drum stated the *truth* in his testimony, concerning the disposition of the goods, he would acknowledge *that he had stolen them* on that Sunday night from the coat-room,

in defendant's inn, and thereby defendant's liability would have been *fixed*.

Therefore, we insist, that as defendant would have attempted to account for the disposition of these goods by Drum, could the defendant have done so without incurring any liability, he was *in reason* and *in law* bound to account for them.

If it is true that it was not clearly *proven* by the testimony *admitted* on behalf of plaintiffs that Drum did steal these goods, it is also true that the court *excluded* other proper testimony from the jury, offered by plaintiffs, which tended to prove that Drum did steal them. The exclusion of this testimony, we insist, was error.

It was proper to present such testimony of the guilt of Drum, on the trial of this case, as would have been admissible on the trial of Drum on the criminal charge of having stolen these goods. Would the confession of Drum, that he stole these goods, not have been competent testimony on the trial of Drum? Such confessions are received in evidence as among proofs of guilt.

1 Greenl. on Ev., § 215.

If uncontradicted, in conjunction with the proof by Larter, that Drum was in charge of the goods when they were last seen by Larter, only a few hours before they were missed, and the sudden and suspicious departure of Drum from Chicago that very night that the goods were lost, would *that admission*, and the other circumstantial testimony, not have been sufficient to have convicted Drum of stealing these goods?

There can be no other conclusion deduced from this testimony.

The court erred, therefore, in refusing to allow plaintiffs to introduce the testimony offered (P. Rec., p. 15), and in charging that "the mere suspicion that Drum took the

" goods, or suspicious circumstances, is not enough. The " evidence should be such as to reasonably satisfy your " minds that the goods were so lost by the fault, or hand " of Drum," when the court refused to allow plaintiffs to introduce proffered evidence of Drum's guilt; and the court erred in the foregoing part of his charge, wherein he says that the burden of proof on this point (*i. e.*, that the goods were lost by the hand or fault of the servant of defendant), is with the plaintiffs; and in refusing to instruct the jury as requested by plaintiffs' 4th instruction, "*that* " *if the the jury find that Drum was the servant of de-* " *fendant, and that Drum stole the property, then none of* " *the defenses set up by the defendant can defeat this action.*" (P. Rec., p. 26.)

The proposition contained in this refused instruction is not contained in any part of the charge of the court. That it should have been given, was of vital importance. It is based upon the evidence in the case, and the law relied on by the defendant, as well as the plaintiffs.

The question involved is one of vast importance to the traveling public. Unless the host of a hotel in a large city guarantees the honesty of his many servants whom he invites his guests to trust, and unless the host is held responsible for a loss incurred by the hand of a dishonest servant, the danger to the public will indeed be great, and the language of the law, intended to secure protection, will be without meaning.

Respectfully submitted.

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MELVILLE W. FULLER,
Of Counsel.

Atty for Pltffs in error and

Supreme Court of Illinois U.S.

~~NORTHERN GRAND DIVISION.~~

OCTOBER TERM, A. D. 1878.

HENRY ELCOX and FREDERICK H. LARTER,
Pl'ffs in Error,
vs.
SARAH A. HILL, Adm'ix of the Estate of ROBERT HILL, deceased,
Def't in Error.

BRIEF FOR DEFENDANT IN ERROR.

A. B. JENKS,
Attorney for Defendant in Error.

CHICAGO:
THE CHICAGO LEGAL NEWS COMPANY, 47 & 49 DEARBORN STREET.
1878.

United States Supreme Court.

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Def't in Error.

Brief for Defendant in Error.

STATEMENT OF THE CASE.

This is an action of trespass on the case commenced against Robert Hill, now deceased, who was proprietor of the Matteson House, a public hotel, in the city of Chicago and State of Illinois, to recover the value of a quantity of jewelry lost by the plaintiffs in error while one of them was a guest at said hotel.

Plaintiffs in error were manufacturing jewellers, doing business at Newark, in the State of New Jersey, and in

March, 1873, Mr. Larter, one of the plaintiffs in error, left home for a tour through several Western cities, with some $6,300 worth of jewelry, which he proposed selling. He arrived in chicago at about eight or nine o'clock on Sunday morning, the ninth day of March, 1873, and went to the Matteson House. The jewelry was contained in two traveling bags or satchels, like those usually carried by travelers; one a large leather bag, containing about $5,300 worth of solid gold jewelry, and the other a small satchel, containing about $1,000 worth of jewelry. The smaller bag was *not locked and had no key.* (P. Rec. p. 13.)

On arriving at the Matteson House, Mr. Larter registered his name and asked for a room, but the house being full, the clerk in charge was unable to assign him a room for some three or four hours. During the time he was waiting for a room, and without informing the proprietor, or any person connected with the hotel, as to the contents of the bags, Mr. Larter placed them in the coat-room and received a check therefor. Between twelve and two o'clock a room was assigned to Mr. Larter on the upper floor of the house, and a bell-boy sent to show him to his room, and to carry up his baggage, consisting of the two bags, which were taken from the coat-room and carried up to Mr. Larter's room. Mr. Larter remained in his room for some time, and then came down to dinner; but before going into the dining-room, he gave the key of his room to the same bell boy, and directed him to go up and bring down the two bags, and put them in the coat-room again, and, on coming out from dinner, the boy handed him the coat-room check for the bags. Mr. Larter saw the bags in the coat-room two or three times after that before he went to bed, the last time being about ten o'clock at night, at which time the boy in charge of the coat-room, as Mr. Larter says, voluntarily told him his bags were perfectly safe, and that the coat-room would be

locked up at twelve o'clock. Soon after this talk Mr. Larter went to his room for the night, and after breakfast in the morning, he called at the coat-room for his satchels, but only the small one could be found, and from that the jewelry had been removed. The jewelry had been stolen. Previous to the loss, Mr. Larter did not inform any person connected with the hotel of the valuable contents of the bags, and did not ask any person in charge of the office to take special care of them. He did not look for a safe or vault, and did not ask to have the bags placed therein. (P. Rec. p. 13.)

At the top of the page of the register, where Mr. Larter wrote his name on entering the hotel, are printed these words: "*Money, jewels, and valuable property must be placed in the safe in the office, otherwise the proprietor will not be responsible for any loss.*" (P. Rec., pp. 12 and 13.)

On the door of the room assigned to Mr. Larter, was a printed notice, containing, among other things, the following: "9. All guests of the house are cautioned "against leaving money, jewels, or valuables of any "description in their rooms, as the proprietor will not be "responsible for them if stolen. *Money, or valuables, "properly labeled, must be deposited in the safe at the office,*" and also a copy of the Statute of the State of Illinois, entitled, "An act for the protection of innkeepers." And a copy of the same notice was posted on every door in the house. (P. Rec., pp. 18 and 19.)

For the purpose of safely keeping the valuables and jewelry of guests, the proprietor had a very large vault built in the Matteson House; it was in plain sight, back of the counter, in the office, immediately in front of Mr. Larter, when he wrote his name upon the register. (P. Rec. pp. 18, 22 and 24.)

The coat-room in the hotel was only intended for the reception of ordinary hand valises, coats and umbrellas, and not for valuables or jewelry; the place for valuables

and jewelry was in the safe or vault. (P. Rec. pp. 21, 22, 23 and 24.)

Upon this state of facts, the plaintiffs in error claim the right to recover the value of the jewelry so lost, while the defendant contends that the plaintiffs have not the right to recover, for three reasons:

1. Because the goods lost were not the baggage of the plaintiffs, but were merchandise which they were engaged in selling, of which Robert Hill had no notice or knowledge.

2. Because the defendant, Robert Hill, had, in conformity with the statute law of the State of Illinois then in force, provided a safe or vault for the custody of valable articles like these carried by Mr. Larter, and had posted notices throughout his house, as required by the law, notifying guests to have their valuables placed in this safe or vault.

3. Because the loss occurred through the want of due care on the part of Mr. Larter; that his negligence so far contributed to the loss of the goods as to absolve the defendant, Robert Hill, from liability.

BRIEF AND ARGUMENT.

The first point made by defendant in error, is, that the goods lost were not the baggage of the plaintiffs, but were merchandise which they were engaged in selling, and of which Robert Hill had no notice or knowledge.

An inn-keeper is responsible only for his guest's baggage, and that term includes articles for use and convenience on the journey, but not merchandise or other valuables, such as silver knives, forks and spoons.

Pettigrew v. *Barnum*, 11 Md. 434.

Common carriers are not liable for the loss of money packed among other goods in a box, in such a way as to

deceive and mislead them. If they are to be held liable, they should be told of the contents.

C. & A. R. R. Co. v. *Thompson*, 19 Ills. 578.

In order to charge common carriers as insurers, they must be treated in good faith; and concealment, artifice or suppression of the truth, will relieve them of this liability.

Am. Ex. Co. v. *Perkins*, 42 Ills. 458.

In this case it is conceded that the goods lost were not the personal baggage of the plaintiffs in error, or of Mr. Larter. He was, in fact, a traveling merchant, and carried his stock in trade with him, making the Matteson House, for the time being, his store-house, without any notice of the fact to the proprietor, or any person connected with, or in charge of the hotel. (P. Rec. p. 13.)

II.

The defendant, in conformity with the statute law of the State of Illinois then in force, had provided a safe or vault for the custody of valuable articles, like those carried by Mr. Larter, and had posted notices throughout his house, as required by the law, notifying guests to have their valuables placed in this safe or vault.

The statute law of the State of Illinois then and now in force, is as follows, viz.:

SECTION 1. *Be it enacted by the People of the State of Illi-*
" *nois, represented in the General Assembly*, That hereafter
" every landlord or keeper of a public inn or hotel in this
" State, who shall constantly have in his inn or hotel an
" iron safe, in good order, and suitable for the safe custody
" of money, jewelry and other valuable articles, belonging
" to his guests or customers, shall keep posted up conspicu-
" ously on the office, also at the inside of every entrance
" door of every public, sleeping, bar, reading, sitting and
" parlor room of his inn or hotel, notices to his guests

"and customers that they must leave their money, jew-
"elry or other valuables with the landlord, his agent or
"clerk, for safe-keeping, that he may make safe deposit
"of the same in the place provided for that purpose.

SECTION 2. "That such landlord, hotel or inn keepers as
"shall comply with the requirements of the first section of
"this act, shall not be liable for any money, jewelry or other
"valuables of gold, silver, or rare and precious stones that
"may be lost, if the same is not delivered to said land-
"lord, hotel, or inn keeper, his agent or clerk, for de-
"posit, unless such loss shall occur by the hand or through
"the negligence of the landlord, or by a clerk or servant
"employed by him in such hotel or inn: *Provided*, that
"nothing herein contained shall apply to such amount of
"money and valuables as is usual, common and prudent
"for any such guest to retain in his room or about his
"person." (Rev. Stat. Ills. 1877, p. 559.)

The Supreme Court of the State of Wisconsin, under a statute similar to that of Illinois, held that the inn-keeper was not liable.

Stewart v. *Parsons*, 24 Wis. 241.

Under the statute of the State of New Jersey, an inn-keeper who provides a safe for the reception of money jewels or ornaments of his guests, is not liable for their loss, etc.

Hyatt v. *Taylor et al.* 42 N. Y. 258.

A guest at a hotel offered a package of jewelry to the book-keeper, requesting him to put it in the safe, but did not disclose the nature of the contents; the book-keeper told him to take the package to his room, which he did, and it was stolen. Notice was posted in the hotel, under the statute. Held, that the inn-keeper was not liable.

Bendetson v. *French*, 44 Barb. 31.

Personal notice to a guest at an inn that a safe is pro-

vided, etc., is equivalent to posting notices under the statute.

Purvis v. *Coleman et al.* 21 N. Y. 111.

The question as to whether notices in this case were posted in the manner required by law, and the question as to whether the loss occurred at the hands of a servant in the employ of the proprietor of the Matteson House, were questions of fact for the jury to determine; and by their verdict they determined those questions in favor of the defendant.

III.

The loss occurred through the want of due care on the part of Mr. Larter, one of the plaintiffs in error; his negligence so far contributed to the loss of the goods as to absolve the defendant, Robert Hill, from all liability.

At common law an inn-keeper is *prima facie* liable for the loss of goods sustained by a guest at his inn; but he may absolve himself from such liability by showing affirmatively that the loss is not attributable to any fault or want of care by him or his servants.

Metcalf v. *Hess*, 14 Ill., 129.

Inn-keepers are liable, at common law, for the baggage of guests put in their charge, when lost without any fault on the part of the owner. But if the owner is negligent, it releases the landlord from liability for the loss.

Kelsey v. *Berry*, 42 Ill., 469.

It has been said that inn-keepers are not responsible to the same extent as common carriers; the loss of goods of a guest while at an inn will be presumptive evidence of negligence on the part of the inn-keeper or his domestics. But some authorities hold he may, if he can, repel this presumption by showing that there has been no negligence whatsoever, or that the loss is attributable to the personal negligence of the guest himself.

Story on Bailments, p. 413, § 472, and cases there cited.

Cashill v. *Wright*, 6 El. & Bl. (88 Eng. Com. Law) 890.

An inn-keeper will not be liable for the goods of his guest if the loss is occasioned by the want of that ordinary care on the part of the guest which a prudent man may be reasonably expected to take under all the circumstances of the case, *and the question whether or not the guest has taken such ordinary care is always a question of fact for the jury.*

Hadley v. *Upshaw*, 27 Texas, 547.

In the case of *Purris* v. *Coleman et al*, 21 N. Y., above cited, it is held that the liability of an inn-keeper is like that of a common carrier, and says that it is the well settled law of that State, that if the plaintiff's negligence caused or contributed to the loss or injury, an action against the carrier cannot be maintained.

Towanda R. R. Co. v. *Munger*, 5 Denio, 255.

Shepherd v. *Hess*, 12 Johns. 434.

Bush v. *Brainerd*, 1 Cowen, 78.

Brownell v. *Flagler*, 5 Hill, 282.

Cook v. *Cham. Trans. Co.* 1 Denio, 99.

Haring v. *N. Y. & E. R. R. Co.* 13 Barb. 9.

The loss of the goods af a guest while at an inn, is presumptive evidence of negligence on the part of the inn-keeper, and upon this presumption he is *prima facie* liable, but he may repel it by showing that the loss is attributable to the personable negligence of the guest himself; *gross negligence need not be shown.* It is enough to exonerate the inn-keeper if the guest has, by his own neglect or imprudence, exposed his goods to peril.

Fowler v. *Dorlan*, 24 Barb. 384.

Negligence of the parties being equal, the plaintiffs cannot recover.

O. & M. R. R. Co. v. *Eares*, 42 Ill. 288.

Ill. C. R. R. Co. v. *Middlesworth*, 43 Ill. 64.
Ortmayer et al. v. *Johnson et al.* 45 Ill. 469.
C. & A. R. R. Co. v. *Gretzner*, 46 Ill. 74.
C. B. & Q. R. R. Co. v. *Payne*, 49 Ill. 499.

Travelers must be presumed to know the relative duties of the different classes of employees about a large hotel; they must be presumed to know that they have no right to intrust their valuables, jewelry and money to the care of the table waiter, the hostler, the bell-boy, the scrub-girl, the bootblack, the laundry-maid, or the fireman and engineer in the heating room, from the fact that it is not the duty of such employees to look after, care for, or take the custody of the baggage and valuables of guests.

The question of Mr. Larter's negligence, in his treatment and care of this jewelry, was a question of fact for the jury, and by their verdict they determined that question against the plaintiffs.

IV.

The attorneys for the plaintiffs in error, have, in their brief, made eight points, upon which they rely for a reversal of this case.

1st. That "the Court refused to charge the jury that "the burden of proof of showing what became of the "property after it had been placed in the custody of the "defendant, and was lost, is on the defendant."

Upon this point, the Court below did charge the jury as follows, viz: "As has been urged on the part of the plaintiffs, the loss of the goods makes a *prima facia* case of liability, and the question for you to determine is, whether the defendant has, by the evidence in the case, excused himself from this *prima facia* evidence of liability by showing negligence on the part of the plaintiff." (P. Rec. p. 32.)

We submit that the charge of the Court to the jury

covered the first point made by the attorneys for the plaintiffs in error. And further submit that the *5th* and *6th* instructions asked, under the circumstances of this case, were not the law, as it appeared by the evidence that the defendant had provided a safe place expressly for that kind of property, and had posted notices, in accordance with the law of the State of Illinois then in force, and the plaintiffs did not choose to avail themselves of the use of such safe place, or notify the proprietor, or any person in charge of the hotel, of the valuable contents of the bags.

2d. That "the Court refused to instruct the jury, that "if the statute of Illinois concerning inn-keepers, had "been fully complied with on the part of the defendant, "yet if the jury find from the evidence that Drum was "the servant of defendant, and stole the property, such "statute and such acts of defendant under it, can consti-"tute no defense to this suit."

Upon this point there was not the slightest evidence that the boy, Drum, stole the goods, and without such evidence, the 3d instruction asked for by plaintiffs would not have been proper. It was conceded that the goods lost were merchandise, carried for the purpose of sale, and not baggage or property carried for the use or convenience of a traveler while on his journey, and that no person connected with the hotel had notice of the valuable contents of the bags. That instruction would take away from the jury the consideration of the question of negligence on the part of Mr. Larter, which negligence might amount to a fraud upon the defendant.

The Court did, however, charge the jury as follows, viz: "If the defendant has made out to your satisfaction "from the proof, that he did comply with this law by "providing a safe, and posting notices as required, then "the plaintiff, in order to hold the defendant liable on "the ground that the loss comes within the exceptions

"of the statute, must satisfy you from the proof that the "loss did in fact occur by the hand of one of the de- "fendant's servants employed in the hotel. The mere "suspicion that Drum took the goods, or suspicious cir- "cumstances, is not enough. The evidence should be "such as to reasonably satisfy your minds that the goods "were so lost by the fault or hand of this servant. The "burden of proof on this point is with the plaintiffs." (P. Rec. p. 32.)

We submit that the charge of the Court to the jury upon this point was correct law, and, with the balance of the charge to the jury, all that the evidence and circumstances of the case required or would allow.

3d. That "it was error for the Court to instruct the jury that 'if you are satisfied from the proof that the loss in this case occurred through the want of due care on the part of Mr. Larter, under the circumstances, then the defendant is not liable, even if you should believe from the proof that the loss occurred by the hand or the act of the boy Drum.'"

We submit that the charge of the Court to the jury upon this point was correct.

The whole testimony in the case, and the admissions of Mr. Larter himself, showed nothing but negligence on his part: and through that negligence, and that alone, so far as defendant was concerned, the loss occurred. Mr. Larter knew the valuable contents of his bags, and should have exercised that care that a prudent man, under the same circumstances, would have exercised. It cannot be good law that will enable one man by such negligence, to defraud another.

4th. That "it was error for the Court to instruct the "jury that if they find, from the evidence, that the goods "in question were not traveler's baggage, but merchan- "dise, and intended for such by the plaintiff, then the

"defendant is not liable, unless the defendant, or some "one in his employ, whose duty it was to attend to such "matters, was informed of the contents of the bags, and "accepted in some form, the custody of them."

We submit that the charge of the Court to the jury in that regard was correct.

5th. That "the Court erred in refusing the plaintiffs "to show by Isaac Hartman and George Barber, wit- "nesses in Court, that William Drum, after his return "from Canada, admitted to him, said Hartman, that he "stole plaintiff"s jewelry from the Matteson House."

We submit that the Court was correct upon this point. If such admission was ever made by Drum, which we doubt, the testimony offered was, at best, *hearsay testimony*; and it would have been error for the Court to admit it on the trial of this case. If the plaintiffs wished to prove any such fact, they should have done so by the boy Drum himself.

6th. That "the Court erred in refusing plaintiffs' mo- "tion for a new trial."

Upon this point, we also submit that the Court below was correct. It was for the jury to determine from the evidence, whether the defendant had complied with the statute, and the jury, by their verdict, did so determine.

7th. As to the seventh point made by the attorneys for plaintiffs in error, we also insist that the Court below was correct.

8th. That "the Court erred in refusing to instruct as "requested by plaintiffs in plaintiffs' first, fourth and "eighth instructions."

The first instruction asked was properly refused. The question of negligence is a question of fact for the jury, and not a question of law to be determined by the Court.

The fourth instruction asked was properly refused. There was not the slightest evidence that Drum stole the property, and therefore, there was nothing upon which

to base such an instruction. If given it would have taken from the jury all consideration of the question of negligence on the part of Mr. Larter.

The eighth instruction asked by plaintiffs, was completely covered by the charge of the Court to the jury.

In conclusion, we submit, that the charge of the Court to the jury was correct in every particular; that it covered all of the points properly asked for by the attorney for the plaintiffs in error in their refused instructions, and that there is no error in the record of this case.

We respectfully ask that the judgment be affirmed.

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